Supreme Court, U.S.
FILED

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No. 021814 JUN 12 2003

In The

Supreme Court of the United States

CLIFTON P. GARDNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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12 pp

QUESTIONS PRESENTED

I. Whether the conviction was obtained without the Defendant understanding the nature of the accusation.

II. Whether the conviction was obtained with complete disregard for the Defendant's right to be tried by a court which acted as an Article III court.

III. Whether the federal government can exercise a species of jurisdiction within an admitted state of the Union which strips citizens of their constitutionally protected rights when not acting in pursuance of Article I, Sec. 8, Cl. 17, of the Constitution.

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case.

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Appendix

Appendix A– Opinion and Order of the Ninth Circuit Court of Appeals, unpublished.

Appendix B – Opinion and Judgment of the District Court of Nevada, unpublished.

Appendix C – Order denying petition for rehearing en bank.

Appendix D – 90 PERCENT AND GROWING. (Material petitioner believes is Essential)

Appendix E – Transcript of trial before the District Judge (Order).

Appendix F – Constitutional Authorities set out Verbatim.

Petitioner, Cliftion P. Gardner, respectfully petitions for a writ of certiorari to review the Memorandum Decision and Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on Nov. 22, 2002 in order to resolve the questions presented regarding the deprivation of the Constitutionally protected rights of the Defendant/Petitioner. It is important to understand, it was not the intent of the Defendant and his family, to defy the government's demands and policy for purposes of obtaining free use of the range. To the contrary, the records show, that the Gardners were among the most cooperative permittees, running livestock on Forest Service lands from the inception of forest reserves in Nevada and up until the 1980's. The problem began when it became the policy of the agency people to disenfranchise the ranching community of grazing tenure and their vested water rights. From that point forward, all who resisted were persecuted and driven from their allotments. The Gardners were among those who were persecuted. Practice established pursuant to Congress' Art. IV authority provides no opportunity for a defense in this regard.

OPINIONS AND ORDERS ENTERED

The opinion of the Ninth Circuit Court of Appeals that gives rise to this petition is not reported, but is reproduced herein as Appendix A. The opinion of the District Court, not published, is reproduced herein as Appendix B. The Order denying petition for rehearing en banc is reproduced as Appendix C.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on Nov. 22, 2002. Petition for rehearing en banc was denied on March 19, 2003. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec 1245.

CONSTITUTIONAL AUTHORITIES

Relevant constitutional authorities set out verbatim are attached as Appendix F.

STATEMENT OF THE CASE

This is a case of first impression. No one has previously asked whether the federal government can lawfully exercise a species of jurisdiction within an admitted state of the Union which strips citizens of their constitutionally protected rights when not acting in pursuance of Article I, Sec. 8, Cl. 17, of the Constitution.

On November 20, 2001, The Federal District Court for the District of Nevada found Cliff Gardner guilty of trespass. During proceedings, Gardner did not deny that he had been running his livestock on lands claimed by the U.S. Forest Service without a permit. Instead, Gardner challenged the federal government's jurisdiction, claiming that the federal government's authority under Article IV of the Constitution is plenary and without limitation and does not afford citizens made subject to such jurisdiction their constitutional rights, guarantees and protections, and therefore cannot be exercised within an admitted State of the Union.

Such jurisdiction has its origin in what has been referred to as the "Property Clause" (Article IV, Section 3, Clause 2, of the Constitution). The courts have held that this clause exempts Congress and the Executive Branch from having to comply with the rest of the Constitution's mandates and limitations when passing and implementing laws involving property belonging to the United States in territory outside the admitted States of the Union.

Cliff and Bertha Gardner and their family are not citizens of the United States living within a territory belonging to the United States. The Gardners are citizens of an admitted State of the Union, which State's municipal sovereignty and jurisdiction under the Constitution are meant to extend over all the territory within Nevada's boundaries and not to a mere 10 to 13 percent of the State.

If the assumption that the federal government can retain municipal sovereignty, jurisdiction and ownership over any amount of land it wishes when a State is admitted to the Union is correct, then it must be assumed as well, that under our constitution, States can be created where no private land or State jurisdiction exists at all. Nothing can be further from the truth. What's more, the Gardners believe that United States District Courts are courts which are organized under Article III of the Constitution. Article III, Section 2, of the Constitution does not allow Article III Courts cognizance over Article IV questions, particularly when a defendant does not waive his personal rights in a proceedings.

Believing this to be true, the Defendant entered into the proceedings challenging the court's jurisdiction and asking the court to make certain determinations regarding the situation described. To his dismay, the court proceeded with the prosecution without addressing the defendant's arguments; regarding the Defendant's request that he be afforded all of his rights which are guaranteed him under the Constitution; that the court act as a constitutional court rather than a legislative court when prosecuting the case; that the Defendant be afforded his right to understand the nature of the cause, as is provided for under the 6th Amendment to the Constitution; and that he be informed of the rules by which the court would be followed in the proceedings. (See Transcript of Proceedings, Appendix E.)

The Defendant argues that a citizen's right to Due Process and Right to Be Heard mean nothing if a judge chooses to ignore the Defendant's arguments, or acts as if the Defendant's arguments are invisible.

In *Marbury v. Madison, 5 U.S. (1Cronch) 137, 173; 2 L.Ed. 60 (1803)*, the Court said, "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

By the unlawful exercise of Article IV jurisdiction within admitted States, Cliff Gardner and his family are being wrongfully deprived of their unalienable and God given rights which are meant to be safeguarded and protected by the Constitution of the United States, which rights include the right to by tried in a court which would act as a constitutional court rather than a legislative court.

By sanctioning the exercise of Article IV jurisdiction within admitted States, the Court itself has created a great paradox – a huge constitutional contradiction, which only the Judicial Branch itself can remedy.

The following text is but a summary of a more complete argument which is presented in Appendix D., a document titled, 90 PERCENT AND GROWING.

REASONS FOR GRANTING THE WRIT

The questions that are being brought in this case are not questions regarding paramount title or the equal footing doctrine per se, even though such issues and the issue regarding the loss of constitutionally protected rights are closely tied.

During the proceedings in this case, neither the court nor the government denied that the court was proceeding under the authority of Article IV of the Constitution. Neither did the court nor the government deny that it has been ruled that Article IV jurisdiction is plenary and without limitation and deprives citizens, made subject to such jurisdiction, of their constitutional rights, protections and guarantees. Neither did the court nor the government deny that it is the holding of the United States Supreme Court that Article III courts must safeguard the God given and unalienable rights of a defendant.

The question being, if it was an Article III or constitutional court that the Defendant was appearing before, why was it hearing an Article IV question - particularly when the Defendant made it clear from the beginning that he was not waiving any of his God given or constitutionally protected rights? And further, even if it is now accepted that Article III courts can hear Article IV questions, how can a defendant prepare a proper defense or obtain effective counsel under such a situation?

For example, if it is now accepted, that a constitutional court can hear Article IV questions, in such a situation, does the court look to case law involving Article IV decisions when rendering its decision, or does it look to law that has been set forth regarding constitutional matters when rendering its decisions? Or would the court draw from both kinds of legal precedents when rendering its decision?

During the proceedings, of November 20, 2001, the court did advise the Defendant of his right to be represented by counsel, his right to have counsel appointed and his right to remain silent, and the Defendant was informed and understood the cause of the accusation. But the Defendant was not informed, nor to this day has he been informed, nor does the Defendant understand the nature of the accusation; its full consequences, or how the Defendant is to prepare a proper and adequate defense in his behalf.

Under the 6th Amendment to the Constitution, the accused shall enjoy the right "to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense". (Emphasis added.) Again, the Defendant does understand the cause of the accusation, or the source of authority by which the Forest Service and Justice Department were proceeding, and the Defendant understands why the Forest people and the Justice Department people believe they have been acting legitimately, but the Defendant certainly does not know or understand the nature of the accusation, nor how to prepare a proper and adequate defense in his behalf. Nor does the Defendant understand the full consequence of the action or accusation. The Defendant asks, what are the final and full consequences of an "without limitation prosecution" when a case is tried in a constitutional court; what can be expected, either during a proceedings, or after sentencing?

In addition, the Defendant does not understand the rules by which the court has been proceeding. The Defendant understands that in constitutional proceedings, that it is the constitution itself which sets forth the primary rules by which the court must proceed, while an Article IV proceeding, it is not necessary that the court follow the commands of the

Constitution.

So what are the rules that a constitutional court is to follow when it hears an Article IV matter? Could it be that a court, in this kind of a situation, can pick and choose the rules it is to follow when deciding a question - and if so, how is a Defendant to prepare a proper and effective defense in his behalf?

If court practice has now evolved to a point where a defendant is no longer able to determine the rules by which the court is proceeding, and he is unable to determine the full nature of the cause that is being brought against him, and there can be a mix of constitutional law and unlimited law, and the court is immune from having to address or discuss such a situation, then it appears to the Defendant that the Constitution and its protections and justice in general are lost to the people.

When States are admitted into the Union, the full Constitution of the United States comes into play, and when the Constitution comes into play, it is the citizens that are to be protected. States are not recognized and created for the purpose of protecting the States per se, States are created and a clear division or power is instituted for the purpose of protecting individuals.

As was so eloquently stated in *New York v. United States, 505 U.S. 144, 181; 112 S.Ct. 2408, 2431; 120 L.Ed. 2d 120 (1992)*:

> The Constitution does not protect the sovereignty of States for the benefit of the States or State governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. (Emphasis added.)

The courts have said repeatedly that when Congress exercises the authority that is granted it by the property Clause or Article IV, Sec. 3, Cl. 2 of the Constitution, it exercises the powers of both a State and the federal government. See *Gibson v. Chouteau, 80 U.S. (13 Will.) 92, 99, 20 L.Ed. 534 (1871); United States v. Gratiot. 39 U.S. (14 Pet.) 526, 537, 10 L.Ed. 573 (1840)*. When Article IV jurisdiction is exercised within a State, the citizens of that State are deprived of right to a division of power between the State and the federal government. (Emphasis added.)

As was further stated in *New York v. United States, 505 U.S. 144, 181; 112 S.Ct. 2408,. 2431; 120 L.Ed. 2d 120 (1992):*

> State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." (Cites omitted.) Just as the separations and independence of the coordinated Branches of the Federal Government serve to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." (Cites omitted.) See also the *Federalist No. 51.* (Emphasis added.)

In *Northern Pipeline Construction Co. v. Marathon Pipe Line Company, 458 U.S. 50, 73 Led.2d 598, 102 S.Ct. 2858 (1982)*, the court quotes James Madison as follows:

> Basic to the constitutional structure established by the Framers was the recognition that "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny," the *Federalist*

No. 47, p. 300 (H.Lodge Ed.1888) (J.Madison). (Emphasis added.)

It is not as if the U.S. Supreme Court has been unclear in recognizing and discussing the various kinds of jurisdiction which can be exercised by Congress. In *Hooven & Allison v. Evatt, 324 U.S. 652, 671; 65 S.Ct. 870, 879 (1945)*, the court said:

> The term "United States" may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution.

Nor has the Court been unclear in defining the various kinds of courts which are recognized.

In *Ex Parte Bakelite Corp. and Northern Pipeline Const. Co. v. Marathon Pipe Line Co., infra*, the Court went into great detail describing the difference between Article I courts, Article III courts and Article IV courts and how some are constitutional courts while others are legislative courts.

The U.S. Supreme Court has also made it clear that an Article IV court cannot operate or be created within an admitted state of the Union; nor can an Article III court act except in obedience or in conformity to the Constitution. *Benner v. Porter, 9 How. 235, 13 L.Ed 119 (1850), Downes v. Bidwell, 182 U.S. 244, 45 L.Ed. 1088, 21 S.Ct. 770 (1901), Northern Pipeline Col v. Marathon Pipe line, 458 U.S. 50, 102 S.Ct. 2858 (1982)* and *Ex Parte Bakelite Corp., 279 U.S. 438, 49 S.Ct. 411 (1929).*

Even so, during the sentencing hearing of February 21, 2001, Judge McKibben stated, "Article III, Section 2 of the United States Constitution provides in pertinent part as follows: 'The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made.' This portion of Article III Section 2 makes it clear that the judicial power was not limited to only certain sections of the Constitution. It extends to all sections of the Constitution, all laws of the United States, and all treaties."

This holding is incorrect, for if it were true, that the judicial power shall extend to all cases arising under the "laws" of the United States, it would mean that any law which was passed by Congress, no matter where it could be applied or whether it was made "in pursuance" to the Constitution's mandates or not, would be enforceable by any United States District Court. This we know cannot be true, for if it were, it would render the primary purpose of the Constitution meaningless. It would also render the decisions articulating the difference between Article III and Article IV jurisdiction meaningless.

In *Printz v. United States, 521 U.S., 898, 924; 117 S.Ct. 2365, 2379 (1997)*, Justice Scalia (when addressing the dissenting opinion of Justice Souter) wrote:

> The dissent perceives a simple answer in that portion of Article VI which requires that "all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution," arguing that by virtue of the Supremacy Clause this makes "not only the Constitution, but every law enacted by Congress as well," binding on state officers, including laws requiring state officer enforcement. Post, at 6. The Supremacy Clause, however, makes "Law of the Land" only "Laws of the

> United States which shall be made in Pursuance [of the Constitution]"; so the Supremacy Clause merely brings us back to the question discussed earlier, whether laws conscripting state officers violate state sovereignty and are thus not in accord with the Constitution.

The Supremacy Clause reads, "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be Supreme Law of the Land..." (Emphasis added.)

It is the phrase, "and... laws...which shall be made in pursuance thereof", that is controlling. In other words, if an act is not made in "pursuance" to the Constitution's mandates, the act is null and void upon its passage. Just because an act is passed by Congress does not mean that it can be enforced within an admitted State of the Union, or against citizens living within an admitted State of the Union, or by a court that is organized under the third article of the Constitution.

Judge McKibben's statement, while on its face seems reasonable, does not take into account the pronouncements of the Supreme Court regarding the bestowal of power upon the various lower courts by Congress under Article III and Article IV of the Constitution.

Article III, Section 2, of the United States Constitution does not allow Article III courts cognizance over Article IV questions, as was said in *Benner v. Porter, supra:*

> As the only judicial power vested in Congress is to create courts whose judges shall hold their office during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a

limited time, it must act independently of the Constitution and upon territory which is not part of the United Sates within the meaning of the Constitution.

The Power to make needful rules and regulations would certainly not authorize anything inconsistent with the Constitution if it [the Constitution] applied to the territories. Certainly no such court could be created within a state, except under the restrictions of the judicial clause. (Emphasis added.)

In *Downes v. Bidwell, supra,* the court said:

The Admission of the State into the Union brought the territory under the full and complete operation of the Federal Constitution, and the judicial power of the Union could be exercised only in conformity to the provisions of that instrument.

The territorial courts, therefore, were not courts in which the judicial power conferred by the Constitution on the federal government could be deposited. They were incapable of receiving it... Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state. (Emphasis added.)

Justice Van Devanter in delivering the opinion for the Court in *Ex Parte Bakelite Corp., 279 US 438, 448; 49 S.Ct. 411, 412 (1929),* wrote:

...it long has been settled that article 3 does not express the full authority of Congress to create courts, and that other articles invest Congress with powers in the exertion

of which it may create inferior courts and clothe them with functions deemed essential or helpful in carrying those powers into execution. But there is a difference between the two classes of courts. Those established under the specific power given in section 2 of article 3 are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exertion of other powers are called legislative courts. Their functions always are directed to the execution of one or more of such powers, and are prescribed by Congress independently of section 2 of article 3...

The first pronouncement on the subject by this Court was in *American Insurance Co. v. Canter, 1 Pet. 511*, where the status and jurisdiction of courts created by Congress for the Territory of Florida were drawn in question. Chief Justice Marshall, speaking for the court, said (page 546):

> 'These Courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3rd article of the Constitution, but is conferred by Congress, in the

> execution of those general powers which that body possesses over the territories of the United State.'
>
> That ruling has been accepted and applied from that time to the present in cases relating to territorial courts. A like view has been taken of status and jurisdiction of the courts provided by Congress for the District of Columbia. These courts, this Court has held, are created in virtue of the power of Congress 'to exercise exclusive legislation' over the district to make the seat of the government of the United States, are legislative rather than constitutional courts, and may be clothed with the authority and charged with the duty of giving advisory decisions in proceedings which are not cases or controversies within the meaning of article 3, but are merely in aid of legislative or executive action and therefore outside the admissible jurisdiction of courts established under that article. (Emphasis added.)

These decisions have not been overturned. In *Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1982)*, Justice Brennan wrote at [458 US 64]:

> ...the Framers intended that as to certain geographical areas, in which no State operated as sovereign, Congress was to exercise the general powers of government. For example, in American Ins. Co. v Canter, ...the Court observed that Art IV bestowed upon Congress alone a complete power of government over territories not within the States that comprised the United States. The Court then acknowledged Congress' authority to create courts for those territories that were not in conformity with Art III. Such courts were "created in virtue of the general right of sovereignty which exist in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory

belonging to the United States. The jurisdiction with which they are invested... is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the states in those Courts, only, which are established in pursuance of the third article of the Constitution; the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general, and of a state government." 1 Pet. At 546, 7 L Ed 242.

The Court followed the same reasoning when it reviewed Congress' creation of non-Art III courts in the District of Columbia. It noted that there was in the District "no division of powers between the general and state governments. Congress has the entire control over the district for every purpose of government; and it is reasonable to suppose, that in organizing a judicial department here, all judicial power necessary for the purposes of government would be vested in the courts of justice." (Citing to *Kendall v. United States, 12 Pet 524, 619, 9 L Ed 1181 (1838).* (Emphasis added.)

The fact that there is no guarantee that persons will be afforded their God given and unalienable rights when they are made subject to Article IV jurisdiction can be seen in, *Murphy v. Ramsey, 114 U.S. 15, 44 [29: 47, 57] (1884); The Church of Jeseus Christ of Later-Day Saints v. U.S., 136 U.S. 1, 34 L.Ed. Ed., 10 S.Ct. Rep. 792 (1890); Downes v. Bidwell, 182, U.S. 244, supra; Dorr v. United States, 195 U.S. 138, 49 L.Ed. 128, 24 S.Ct. 808, Ann Cas 697 (1904); Dowdell v. United States, 221 U.S. 325, 55, L.Ed. 753, 31 S.Ct.590 (1911); Ocampo v. United States, 234 U.S. 91, 98 L,Ed. 1231, 34 S.Ct. 712 (1914);* and *Hooven & Allison v. Evatt, 324 U.S.652, 65 S.Ct. 870, 98*

L.Ed. 1252 (1944).

The fact that it has now become accepted by the courts, that Article IV or Territorial jurisdiction can be exercised within admitted States and that such power, even under this application, continues to be applied as a power that is without limitation can be seen in; *Camfield v. United States, 167 U.S. 518, 17 S,Ct. 864, 42 L.Ed. 260, (1897); Light v. United States, 220 U.S. 523, 31 S.Ct. 485, 488, 55 L.Ed. 570 (1911); F.C.P. v. Idaho Power Co., 344 U.S. 17, 73 S.Ct. 85, 87, 97 L.Ed. 15 (1952); Alabama v. Texas, 374 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 689 (1954); Kleppe v. New Mexico, 426 U.S. 529, 49 L.Ed. 2d 34 (1976);* and *California Coastal Commission v. Granite Rock Co., 480 U.S. 572, 94 L.Ed. 2d 577, 107 S.Ct. 1419 (1987).*

In *Hooven & Allison v. Evatt, 324 U.S. 652, 65 S Ct 870, 89 L Ed 1252 (1944),* the Court said:

> In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States... And in general the guaranties of the Constitution, save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the Unites States, has made those guaranties applicable.

The 9th Circuit Court in *United States v. Gardner, 107 F.3d 1314 (9th Cir. 1996),* made reference to the decisions in *United States v Texas, 339 U.S. 707, 70 S. Ct. 918, 94 L.Ed. 122, 1 (1950)* and *Coyle v. Smtih, 221 U.S., 559, 31 S. Ct. 688, 55 L.Ed. 853 (1911),* stating that "the purpose of the equal footing doctrine is not to eradicate all diversity among states but rather to establish equality among the states with regards to political

standing and sovereignty."

This is precisely our point. It is true, the Equal Footing Doctrine does not guarantee economic equality among States. However, a State cannot be said to be sovereign over its territory, or within its realm of authority which is recognized by the Constitution, when it is said that the federal government's authority over the majority of a State's lands, is a power that is without limitation; that it exercises both the powers of a State and of the federal government; and that all State law must yield when it is found to be in conflict with federal law. Such a notion is not supported by the *Pollard v. Hagan* case, wherein it is stated that a State is not placed on an equal footing with its sister States until such time that it exercises all of the municipal sovereignty, jurisdiction and eminent domain over all of the lands within its limits. It is not supported by the *Pollard v Hagan* case, the *Coyle v. Smith* case, nor the *Shively v. Bawlby* case wherein it is stated that Alabama and other new States are entitled to the sovereignty and jurisdiction over all the territory which lays within their limits. It is not supported by the *Pollard v. Hagan* case wherein "eminent domain" as used therein, is defined as "The right which belongs to the society, or to the sovereign, of disposing, in case of necessity, and for the public safety, of all the wealth contained in the state, is called the eminent domain." Nor is it supported by the *Pollard v. Hagan* case or the *Shivley v. Bowlby* case wherein it is stated that there are only two ways under which the federal government can hold territory under the Constitution. One being by the authority of Art. I, Sec. 8, Cl. 17, and the other being by compact or treaty - which in this instance, by the Treaty of Guadalupe Hidalgo and the treaty for the purchase of the Louisiana Territory, there is no authority given for the federal government to retain lands after a state is admitted to the Union. *Shively v. Bowlby, 152 U.S. 1, 38 L.Ed. 331, 14 S.Ct. Rep. 548 (1894), Pollard v. Hagan, 44 U.S. 212, 3 How. 212, 11 L.Ed. 565 (1845), Coyle v. Smith, 31*

S.Ct. 688, 55 L.Ed. 853 (1911). (See argument and discussion beginning on page 10, of Appendix D.)

Upon the adoption of the Constitution, there were three sovereigns recognized. First, there was the States with their Police Powers. Then there was created a federal government with its Enumerated Powers. But most important was the residue of power which was left to the people, who's God given rights cannot be infringed by either the States or the Federal Government; which include the peoples right to be protected by the Separations of Powers Doctrine, the right of local self government, the right to be protected by the Treaty Clause that is written into Article III, Sec. 2 and Article VI, Cl. 2, of the Constitution, the right to be tried by a Common Law court, as well as all other rights which are provided for under the Constitution and Bill of Rights and which are defined by Common Law.

Neither is there political equality for the citizens of Nevada. By controlling the vast majority of the State's lands and resources, the federal government easily controls the politics of the State, thus jeopardizing the freedom, liberty and independence of the people.

In the *Report Of The Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, Part II, June 1957*, pages 19, 20,and 21, is the following discussion and record of the Constitutional Convention:

> The genesis of Article I, Section 8, Clause 17, of the Constitution, is to be found in the proposals made by Madison and Pinchney on August 18, 1787... On September 5, 1787, the committee of eleven, to whom the proposals of Madison and Pinchney had been Referred, proposed that the following power be granted to

Congress:

> To exercise exclusive legislation in all cases whatsoever over such district (not to exceeding ten miles square) as may, by cession of particular states and the acceptance of the legislature, become the seat of government for the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

...The debate concerning the proposal of the committee of eleven was brief, and agreement concerning it was reached quickly, on the day of the submission of the proposal to the Convention. The substance of the debate concerning this provision was reported by Madison as follows:

> So much of the fourth clause as related to the seat of government was agreed to, *nem. com.*
>
> On the residue, to wit, "to exercise like authority over all places purchased for forts, &c."
>
> **MR. GERRY** contended that this power might be made use of to enslave any particular state by buying up its territory, and the strongholds proposed would be a means of awing the state into an undue obedience to the general government.
>
> **MR. KING** thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make

> the power safe.
>
> **MR. GOVERNEUR MORRIS** seconded the motion, which was agreed to, *nem. com.*; as was then the residue of the clause, as amended.

The report goes on to state, "There appears to be no question but that the requirement was added simply to foreclose the possibility that a State might be destroyed by the purchase by the Federal Government of all of the property within the State."

By this record, that it is made abundantly clear, it was the intent of the Founders to stop the Federal Government from acquiring or holding any land within admitted states except by the authority of Art. I, sec. 8, Cl. 17.

As was stated by Hamilton, in the Federalist No. 79, p. 491 (1881), "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

What the Founders feared has come true; today in Nevada and in other Western States, almost everyone's economic well-being is dependant upon the permitting processes of the Federal Government. Recognition of State and Common Law rights are shorn away by the exercise of Congress' so called Article IV jurisdiction. There is no recognition for state recognized property interest. There is no security. There are only permits which are issued by the Feds, which can be withheld or canceled at any time. Mining, ranching and timbering interest, and even those who depend on the public lands for recreational opportunity have learned, that in order to survive, "they must keep their heads down and their mouths shut". This puts the Feds in near complete control, both politically and economically. It also feeds corruption, for when so much power is placed in the hands of a central government, whereby a mere permit,

either granted or withheld, can make or break an individual or business, payoffs emerge; be they political or otherwise. In Nevada today, most of the payoffs are political, for whoever supports the Federal Government and its policy fares best in the outcome of their enterprise. Which leads to a situation whereby the Feds are becoming stronger and stronger while the private sector is becoming more and more subdued.

When the Defendant was brought before the magistrate judge on trespass charged on June 15, 2000, he objected to having a magistrate judge decide the case and asked that the case be tried by a Federal District Court Judge. To the Defendant's dismay, when he did appear before the District Court later, the District Court Judge also acted as a legislative judge, rather than a constitutional judge. And so, when the Defendant was brought before the magistrate judge a second time on trespass charges, on September 20, 2001, the Defendant made it clear, that he was not objecting to being tried by a magistrate judge so that his case would be assigned to a Federal District Judge necessarily - but instead, was requesting that the case be tried by a court which would act as a constitutional court, or one which would act in full obedience to the Constitution.

Soon after, the Defendant received notice that he was to appear before the Federal District Court in Reno, Nevada on Nov. 20, 2001. It was with great apprehension that the Defendant appeared on Nov. 20, for he knew by then, that it could be expected that the court would not act in recognition of his constitutionally protected rights.

In *Peretz v. United States, 501 U.S. 923, 111 S. Ct. 2661 (1991), United States v. Raddatz, 447 U.S. 667 (1980)* and *Gomez v. United States, 490 U.S. 858 (1989),* the Court confirmed the right if citizens to be heard by a court which is organized under the authority of Articale III. As cited in the

Peretz case, (absence of objection constitutes waiver of right to be present at all stage of criminal trial) see *United States v. Gagnon, 470 U.S. 522, 528 (1985);* failure to object to closing of courtroom is waiver of right to public trial) *Levine v. United States, 362 U.S. 610, 619 (1960)*; (failure to object constitutes waiver of Forth Amendment right against unlawful search and seizure) *Segurola v. United States, 275 U.S. 106, 111 (1927)*; (failure to object constitutes waiver of Fifth Amendment claim) *United States v. Coleman, 707, F. 2d 374, 376 (CA9).* By these cases it is made abundantly clear; a primary reason for the right of persons to appear before an Article III court is so that such persons may be afforded their rights which are recognized and protected by the Constitution.

Even if it were assumed that Article III courts can undertake the prosecution of an individual pursuant to Article IV, certainly such prosecution cannot occur when a defendant does not waive his constitutionally protected rights.

In this instant case the Defendant stated during the proceedings, that he was not waiving any of his God given or unalienable rights which are protected by the Constitution. In addition the Defendant submitted a list of rights to the court asking that the court expound on each of the listed rights as though they were individual arguments presented to the court. Yet the court ignored the Defendant's request.

Following is the list of rights which the Defendant submitted during the initial hearing and during trial. Again, in this appeal, the Defendant asks, is it not true that a citizen of an admitted State of the Union cannot, under the Constitution, be deprived of the following rights when the federal government is not acting in pursuance of Article I, Sec. 8, Cl. 17, of the United States Constitution?

1. The right to be tried by a court which acts as a Constitutional Court rather than a Legislative Court.

2. The right to be treated as a citizen of an admitted State of the Union rather than a citizen of a Territory.

3. The right to be governed by State and Common Law, (including the right to have property in public lands defined by State and Common Law).

4. The right to be protected by the 6th Amendment to be informed of the nature of the charges.

5. The right to have municipal government exercised at the local level rather than by the Nation as a whole.

6. The right of the Defendant to be judged by his peers at the local level, rather than at the Federal District level. *See footnote 1, below.*

7. The right of the Defendant to be protected by the 10th Amendment to the Constitution, wherein the powers of the Federal Government are limited and enumerated.

---

1. Our forefathers felt that in order to have justice, it is obvious that a jury of peers must be people who actually know the defendant. Patrick Henry said; "What is meant by peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life." (Elliot, 3:579)

Mr. Holmes, from Massachusetts, argued strenuously that for justice to prevail, the case must be heard in the vicinity where the fact was committed by a jury of peers. "...a jury of the peers would, from their local situation, have an opportunity to form a judgment of the character of the person charged with the crime, and also to judge of the credibility of the witnesses." (Elliot, 2:110).

8. The right of the Defendant to be protected by the Bill of Rights and the Constitution in their entirety, and not in some instances and not others.

9. The right of the Defendant to be protected by the Guarantee Clause of the Constitution, Article IV, Sec. 4; and Article IV, Section 2, which guarantee the "Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the Several States. (See argument and discussion beginning at page 61 of Appendix D.)

10. The right of the Defendant to be protected by Article I, Section 8, Clause 17 of the Constitution, which guarantees that no land be acquired or municipal jurisdiction be exercised within a State except by purchase, and by consent of the legislature.

11. The right of the Defendant to have the Constitution interpreted and enforced in accordance to the Founder's original intent, whereas the language incorporated within Article I, Section 8, Clause 17, as Mr. Gerry said during the Constitutional Convention, was to prevent the Federal Government from obtaining such power that it "Might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the general government."

Mr. Wilson, signer of "The unanimous Declaration," who also later became a Supreme Court Justice, stressed the importance of the jurors knowing personally both the defendant and the witnesses. "Where jurors can be acquainted with the characters of the parties and the witnesses - where the whole cause can be brought within their knowledge and their view - I know no mode of investigation equal to that by a trial by jury:...the jurors may indeed return a mistaken or ill-founded verdict, but their errors cannot be systematical." (Elliot, 2:516)

12. The right of the Defendant to have his rights protected as unalienable God given rights, rather than as federally granted rights, which can be taken from him at any time by a later act of Congress.

13. The right of the Defendant to be protected by the Treaty Clause of the Constitution which is incorporated within Article III of the Constitution, and subsequently, Article IX of the Treaty of Guadalupe Hidalgo, which states that the Mexicans [or persons living therein] "shall be incorporated into the Union of the United States..., to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution". (See argument beginning at page 29, Appendix D.)

14. The right of the Defendant to be protected by a division of power between the Federal and State governments, as is recognized in *New York v. United States, 505 U.S. 144, 112 S. Ct. 2408 120 L Ed. 2d 120 (1992)*, wherein the Court said, "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between the federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power". *Coleman v. Thompson, 501 U.S. 722, 114 L ed 2d 640, 111 S Ct 2546 (1991)*. "Just as the separations and independence of the coordinated Branches of the Federal Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ahcroft, 501 U.S., at 422, 155 L ed 2d 120, 112 S Ct (1992).*

15. The right of the Defendant to be heard by a court which shall address each argument raised, in detail, as has been acknowledged in *Marbury v. Madison, 1 Cranch (5 U.S. 137 (1803),* wherein the Court said, "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

Is it not true, that a defendant's right to appear before an Article III court rather than a magistrate court has as much to do with the defendant's right to appear before a court which acts in full obedience to the Constitution and the right to have one's rights protected by that instrument, as it has to do with the right of a defendant to appear before a judge who is appointed for life?

What of the Defendant's right to have his rights protected as unalienable, God given rights rather than as federally granted rights which can be taken from him an any time by a majority vote of Congress?

How can the courts reconcile the federal government's control and retention of such a vast amounts of land within so many of the Western States when it was so clearly stated during the Constitutional Convention that the acquisition of great amounts of land within Sates was to be prevented, for the power, as Mr. Gerry contended, "Might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government"?

Can anyone deny that Defendant was denied his right to a State's governance which was free from federal political dominance? Can anyone deny that whenever one interest owns

or control the vast majority of the wealth within a community that it most often controls the politics of that community as well?

How can the court reconcile the language that is incorporated within the Treaty of Guadalupe Hidalgo which states that the Mexicans [persons living therein] "shall be incorporated into the Union of the United States, and be admitted at the proper time to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution..." with the situation that exists today?

How can it be said that Nevada is being treated as a Sovereign State when it is assumed that the federal government can buy any amount of land it wishes, at any time it wishes within the State, and then exercise absolute and unlimited jurisdiction over such land without obtaining the consent of the State's Legislature? How can the courts reconcile this with the intent of Article 1, Section 8, Clause 17 of the Constitution?

Are we to believe that the Founders would have agreed that it was lawful for the federal government to forever own and control, without limited authority, vast amounts the lands within admitted States?

Can anyone deny that the original intent of Article 1, Section 8, Clause 17, the 10th Amendment, and the Constitution in its entirety, have been corrupted and nullified by the accepted exercise of Article IV jurisdiction within admitted States?

How can it be said that citizens living in the State of Nevada are equal under the privileges and immunities clause which is incorporated within Article IV, Sec 2, of the Constitution, when the people are denied their right to exercise municipal government at the local level to the same degree and in the same

manner as are citizens living in the original States? (See argument beginning at page 61 of Appendix D.)

And how can it be said that Nevada is a Sovereign State when it is assumed that the federal government retains sovereignty over the waters of the State - and Nevada only exercises authority over the water that lay within its borders by the authority of Article IV of the Constitution and the Act of 1866? (See argument beginning at page 45, Appendix D.)

And how can it be said that Nevada is a Sovereign State when it is assumed that federal law can and does override conflicting state law on 87 percent or more of the land that lays within its borders? (See *California Costal Comm. v. Granite Rock, 480 U.S. 572, 107 S.Ct. 1419, 94 L.Ed. 2d 577 (1987)*)

And is it not true, that because of the exercise of Article IV jurisdiction within admitted States, persons such as the Gardners are deprived of having their rights to graze within their allotments recognized by State and common law?

Is it not true, that if an Article III court must act in full obedience to the Constitution and the Forest Service must act in accordance to that law which is promulgated in pursuance of Congress's so called Article IV, jurisdiction, which deprives citizens of their constitutional right protections and guarantees, then in fact, and Article III court cannot hear an Article IV matter?

Was James Madison so wrong when he stated, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny"?

Was the Court so wrong when it said in *New York v. United States* case, that "Just as the separations and independence of the coordinated Branches of the Federal Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front"?

CONCLUSION

The Petitioner sees this case as the most important case to come before the Court since the Constitution itself was adopted; for what are the implications of a practice which strips persons of their constitutional protections, over ever increasing areas of our nation, if it is not a means of destroying our constitutional form of government?

Certainly, a ruling in favor of the Petitioner would be far reaching and disruptive to many governmental institutions. However, the consequence of continuing the unconstitutional practices, herein addressed, will certainly bring about the destruction of our free and prosperous nation.

For the foregoing reasons, Petitioner respectfully requests that this petition for writ of certiorari be granted.

Dated the 4th day of June, 2003.

Respectfully submitted,

Clifton P. Gardner
In pro se
HCR 60 Box 700
Ruby Valley, NV 89833
(775) 779-2234

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CLIFTON P. GARDNER, Defendant-Appellant.	No. 02-10152 D.C. No. CR-01-00141-HDM MEMORANDUM* (Filed Nov. 22, 2002)

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted November 18, 2002**

Before: REINHARDT, RYMER, and SILVERMAN, Circuit Judges.

Clifton P. Gardner appeals pro se his conviction following a bench trial, for not removing unauthorized livestock from national forest land when requested to do so by a forest officer, in violation of 16 U.S.C. § 551 and 36 C.F.R. § 261.7(b). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review issues of law de novo, *United*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States v. Boyd, 214 F.3d 1052, 1054 (9th Cir. 2000), and we affirm.

Gardner's contention that he was not lawfully summoned lacks merit because Gardner committed a petty offense for which a violation notice is sufficient. *See Boyd*, 214 F.3d at 1057; Fed. R. Crim. P. 58(b)(1); 16 U.S.C. § 551 and 36 C.F.R. § 261.7(b).

Further, Gardner provides no support for his contentions that the district court acted as a legislative court and violated his constitutional rights.

AFFIRMED.

UNITED STATES DISTRICT COURT

_____ District of NEVADA

UNITED STATES OF AMERICA

V.

CLIFTON P. GARDNER

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed Mar. 18, 2002)

Case Number:
CR-N-01-141-HDM(VPC)

Clifton P. Gardner
(representing himself)
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

X was found guilty on count(s) One after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
16 U.S.C. § 551 and 36 C.F.R. § 261.7(b)	Not removing unauthorized livestock from the National Forest System Lands when requested to do so by a Forest Officer	8-22-2001	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 530-24-9380

Defendant's Date of Birth: 5-4-38

Defendant's USM No.: 36381-048

Defendant's Residence Address:

H.C.R. 60, Box 700
Ruby Valley, NV 89833

Defendant's Mailing Address:

March 11, 2002
Date of Imposition of Judgment

/s/ Howard D. McKibben
Signature of Judicial Officer

HOWARD D. McKIBBEN,
Chief United States District Judge
Name & Title of Judicial Officer

March 12, 2002
Date

PROBATION

The defendant is hereby sentenced to probation for a term of One (1) Year .

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

X The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

☐ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional condition on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and

shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall reside at and participate in the program at the Banham Place half-way house and shall report to this institution by no later than April 3, 2002 at 4:00 p.m. Defendant shall bear the cost of his placement at that facility.

2. Defendant shall be confined to home detention, which shall include electronic monitoring, for a period of ninety (90) days at the direction of the probation officer. Defendant shall bear the cost of electronic monitoring.

3. The defendant shall not turn his cattle on to the U. S. Forest Service property without prior authorization. If any of defendant's cattle trespass upon public lands, the defendant shall remove them within three days after notice.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	$ 10.00	$ 5,000.00	$ None

☐ The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Totals:	$ _____	$ _____	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

☐ If applicable, restitution amount ordered pursuant to plea agreement .... $ _____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine and/or ☐ restitution.

☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A X Lump sum payment of $ 10.00 for assessment is due immediately, fine due

☐ not later than _____, or
X in accordance with [ ] C, [ ] D, or X E below; or

B ☐ Payment to begin immediately (may be combined with [ ] C, [ ] D, or [ ] E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

The amount of $5,000.00 posted as bond in support of defendant's release shall be applied to the fine imposed.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee, v. CLIFTON P. GARDNER, Defendant-Appellant.	No. 02-10152 DC# CR-01-00141-HDM Nevada (Reno) ORDER (Filed Mar. 19, 2003)

Before: REINHARDT, RYMER, and SILVERMAN, Circuit Judges

The panel has voted to deny appellant's petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings shall be accepted in this closed appeal.

90 PERCENT AND GROWING

To all who support the Federal Government's claim to the public lands which lay within Nevada's boarders, we ask that you address and answer the following questions.

QUESTION 1 (Original Intent)

It is widely accepted that the Federal Government owns over 87 percent of the lands which lay within Nevada's borders. This places those of us who live and work in Nevada in a serious situation. By controlling the vast majority of the State's lands and resources, the federal government easily controls the politics of the State, thus jeopardizing the freedom, liberty and independence of the people. In the *Report Of The Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, Part II, June 1957,* is the following discussion and record of the Constitutional Convention:

> The genesis of Article I, Section 8, Clause 17, of the Constitution, is to be found in the proposals made by Madison and Pinchney on August 18, 1787... On September 5, 1787, the committee of eleven, to whom the proposals of Madison and Pinchney had been referred, proposed that the following power be granted to Congress:
>
> To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of the legislature, become the seat of government for the United

States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

...The debate concerning the proposal of the committee of eleven was brief, and agreement concerning it was reached quickly, on the day of the submission of the proposal to the Convention. The substance of the debate concerning this provision was reported by Madison as follows:

> So much of the fourth clause as related to the seat of government was agreed to, *nem. con.* On the residue, to wit, "to exercise like authority over all places purchased for forts, &c."
>
> **MR. GERRY** contended that this power might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government.
>
> **MR. King** thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make the power safe.
>
> **MR. GOVERNEUR MORRIS** seconded the motion, which was agreed to, *nem. com.*; as was then the residue of the clause, as amended.

The report goes on to state, "There appears to be no question but that the requirement was added simply to foreclose the possibility that a State might be destroyed by the purchase by the

Federal Government of all of the property within the State."

By this record, we believe that it is made abundantly clear, that it was the intent of the Founders to stop the Federal Government from acquiring or holding any land within admitted States except by the authority of Art. I, Sec. 8, Cl. 17, so as to prevent the situation that now exists in the State of Nevada, whereby the Federal Government now claims absolute ownership and control of the vast majority of the lands and resources within our State.

Our question is. Is there anyone who can prove that the Founders intent was otherwise, and if so, please make that information available to us. Otherwise we must conclude that the Federal Government's claim to the public lands that lay within Nevada is unconstitutional.

QUESTION 2 (Further Non-Compliance with Art I, Sec. 8, Cl. 17)

At one time, here in the United States, it was understood that the Federal Government could not purchase or acquire land within the Union, or exercise jurisdiction over it, until it had the approval of the State in which the purchase was to be made. However, it now seems that this has all changed. Now it is the practice of Federal Government to do as it may wish. It enters into land trades within admitted States without the State's approval; it makes whatever purchases of land it wants within admitted States without the State's approval; and then it goes about exercising plenary and unlimited jurisdiction over the lands it has acquired without the State's approval.

According to an article which was printed in the Elko Daily Free Press on March 2, 1995, federal land claims in the

contiguous 48 states increased by 48 million acres from 1964 to 1993, an area the size of South Carolina. Nevada experienced the greatest increase wherein federal land claims increased by 3.7 million acres during this same period. (See attached article.) By these figures, it is indicated, that today, more than 90 percent of Nevada is now claimed and controlled by the Federal Government.

This practice makes Article I. Section 8, Clause 17, of the Constitution a nullity. How is the government getting by with this, and why hasn't the leadership of the western States done something about it? Could it be, that what the Founders feared, has come true - that should the Federal Government ever acquire vast amounts of land within an admitted State, that it would awe that State into undue obedience and destroy its independence? Is it not true, that the Federal Government is controlling the politics in the State of Nevada today? (See the attached article and statement by Governor Bob Miller.)

Our question is, first, is there anyone who has information which shows that the Federal Government need not comply with Art. I., Sec. 8, Cl. 17, when it either purchases lands within admitted States of the Union, or exercises jurisdiction over the lands it has acquired within an admitted State? And second, is there anyone who can show that the citizens of Nevada and their representatives are not now being awed into undue obedience by the vast federal presence within our State?

QUESTION · 3 (Loss of God given and constitutionally protected rights)

Within the Declaration of Independence it is early stated; "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

unalienable rights, that among these are life, liberty, and the pursuit of happiness." The Supreme Court has long held that the Constitution does not grant rights but merely gives pre-existing rights constitutional protection. Unfortunately however, this doctrine has not always been honored; particularly with regard to the application of the "property clause", or Article IV, Section 3, Clause 2, of the Constitution. As an example:

In *Murphy v. Ramsey,* 114 U.S. 15, the Court said in regards to the federal government's Article IV powers:

> The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. ...It rests with Congress to say whether, in a given case, any of the people, resident in the Territory, shall participate in the election of its officers or the making of its laws; and it may therefore take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient.

In *The Church of Jesus Christ of Later-Day Saints v. U.S.*, 136 U.S. 1, the Court said in regards to the federal government's Article IV powers:

> The principal questions raised [in this case] are, first, as to the power of Congress to repeal the charter of the Church of Jesus Christ of Latter-Day Saints; and, secondly, as to the power of Congress and the courts to seize the property of said Corporation and to hold the same for the purposes mentioned... The power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given in the

> Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. ...Congress may not only abrogate laws of the Territorial Legislatures, but it may itself legislate directly for the local government. It may make a void Act of the Territorial Legislature valid, and a valid Act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments. ...It has passed beyond the stage of controversy into final judgement, The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. ...Doubtless Congress, in legislating for the Territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its Amendments; but these limitations would exist rather by the inference and the general spirit of the Constitution from which Congress derives all its powers, than by any express and direct application of its provisions.

In *Downes v. Bidwell,* 182 U.S. 244, the Court said:

> Neither were they [the Territorial courts] organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state." To the same effect are *Clinton v. Englebrecht,* 13 Wall. 434, 20 L. ed. 659; *Good v. Martin,* 95 U.S. 90, 98, 24 L. ed. 341, 344; *McAllister v, United States,* 141 U.S. 174, 35 L. ed. 693, 11 Sup. Ct. Rep. 949. That the power over the territories is vested in Congress without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in *M'Culloch*

v. Maryland, 4 Wheat. 316, 422, 4 L. ed. 579, 605, and in *United States v. Gratiot,* 14 Pet. 526, 10 L. ed. 573, So, too, in *Church of Jesus Christ of L. D. S. v. United States,* 136 U.S. 1, 34 L. ed. 478, 10 Sup. Ct. Rep. 792, in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: "The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States.

In *Dorr v. United States,* 195 U.S. 138, the Court said:

> We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in article 4, & 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made a part of the United States by congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation, and of its own force, carry such right to territory so situated.

In *Dowdell v. United States,* 221 U.S. 325, the Court said:

> The objection that the accused was not tried by a petit jury is disposed of in *Dorr v. United States,* 195 U.S. 138, 49 L. ed. 128, 24 Sup. Ct. Rep. 808, 1 A. & E. Ann. Cas. 697, in which it was held that in the absence of congressional legislation to that end, there was no right to demand trial by jury in criminal cases in the Philippine

> Islands [the Philippines being Territory of the United States].

In *Ocampo v. United States,* 234 U.S. 91, the Court said:

> Section 5 of the act of Congress [for the governance of the Philippines] contains no specific requirement of a presentment or indictment by grand jury, such as is contained in the 5th Amendment of the Constitution of the United States. And in this respect the Constitution does not, of its own force, apply to the Islands, *Hawaii v. Mankichi,* 190 U.S. 197, 47 L. ed. 1016, 23 Sup. Ct. Rep. 187, 12 Am. Crim. Rep. 465...

In *Hooven & Allison v. Evatt,* 324 U.S. 652, the Court said;

> It is no longer doubted that the United States may acquire territory by conquest or by treaty, and may govern it through the exercise of the power of Congress conferred by Sec.3 of Article IV of the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States. And in general the guaranties of the Constitution, save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States has made those guaranties applicable.

In *Church of Jesus Christ of Later-Day Saints v. United States,* 136 U.S. 1 and in *Downes v. Bidwell,* 182 U.S. 244, and *Dorr v. United States,* the Court said:

> Doubtless Congress, in legislating for the Territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its Amendments: but these limitations would exist rather by inference and the general spirit of the Constitution from which Congress derives all its powers, than by any express and direct application of its provisions.

The fact that it has now become accepted by the courts, that Article IV or Territorial jurisdiction can be exercised within an admitted State under the authority of the Forest Service and the Bureau of Land Management, and that even under this application, such power continues to be applied as a power that is plenary and without limitation can be seen in, *Camfield v. United States*, 167 U.S. 518, 17 S. Ct. 864, 42 L. Ed. 260; *Light v. United States*, 220 U.S. 537, 31 S. Ct. 485, 488, 55 L. Ed. 570; *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405, 37 S. Ct. 387, 389, 61 L. Ed. 791; *F.C.P. v. Idaho Power Co.*, 344 U.S. 17, 21, 73 S. Ct. 85, 87, 97, L Ed. 15; *Alabama v. Texas*, 374 U.S. 272, 273, 74 S. Ct. 481, 98 L. Ed. 689; *Kleppe v. New Mexico*, 426 U.S. 529, 49 L. Ed. , *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572.

In our research, we have found that in nearly every court case involving the United States Forest Service and Bureau of Land Management, it is stated within the briefings that these agencies operate under the authority of Article IV, Section 3, Clause 2 of the Constitution.

Our question is, can anyone produce information which shows that persons are guaranteed their God given and Constitutionally protected rights when they are made subject to Congress's so called Article IV authority? And, can anyone

produce evidence which shows that such an application of law, which strips persons of their God given and constitutionally protected rights, when it is applied within an admitted State, or elsewhere for that matter, does not violate the primary purpose of the Constitution and the Declaration of Independence?

And too, can anyone produce information which shows that the enforcement of the Declaration of Independence, is not required by Article VI, Clause 1, of the Constitution?

QUESTION 4 (Municipal Sovereignty, Jurisdiction and Eminent Domain)

In *Pollard v. Hagan*, at 44 U.S. 212, 221, the Court said:

> We think a proper examination of this subject will show, that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama, or any of the new states were formed; except for temporary purposes, and to execute the trusts created by the acts of cession executed by them to the United States, and the trust created by the treaty with the French republic, of the 30th of April, 1803, ceding Louisiana. (Emphasis added.)
>
> [44 U.S. 212, 222] ...When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to invest them with it, to [44 U.S. 212, 223] the same extent, in all respects, that it was held by the states ceding the territories.
>
> * * *
>
> When Alabama was admitted into the union, on an equal footing with the original states, she succeeded to all the

rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. And if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative: because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted.

By the 16th [17th] clause of the 8th section of the 1st article of the Constitution, power is given to Congress 'to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same may be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.' Within the District of Columbia, and the other places purchased and used for the purposes above mentioned, the national and municipal powers of government, of every description, are united in the government of the union. And these are the only cases, within the United States, in which all the powers of government are united in a single government, except in the cases already [44 U.S. 212, 224] mentioned of the

> temporary territorial governments, and there a local government exists. The right of Alabama and every other new state to exercise all the powers of government, which belong to and may be exercised by the original states of the union, must be admitted and remain unquestioned, except so far as they are, temporarily, deprived of control over the public lands. (Emphasis added.)

These finding by the Court in the *Pollard v. Hagan* case were upheld fifty years later in *Shively v. Bawlby*, 152 U.S. 1, wherein the Court stated:

> In *Pollard's Lessee v. Hagan*, (1844,) this court, upon full con- [152 U.S. 1, 27] sideration,... adjudged that, upon the admission of the state of Alabama into the Union, the title in the lands below high-water mark of navigable waters passed to the state, and could not afterwards be granted away by the congress of the United States. Mr. Justice McKinley, delivering the opinion of the court, (Mr. Justice Catron alone dissenting,) said: 'We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new states were formed, except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty with the French Republic of the 30th of April, 1803, ceding Louisiana.' 'When Alabama was admitted into the Union on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United

> States for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. '3 How. 221-223. Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. (Emphasis added.)

As is cited above, "the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted", by acts of cession, by treaty, or by and under the authority of Art. I, Sec. 8, Cl. 17. As regards the public lands which lay within Nevada's borders; there have been no acts of cession; the lands were not purchased by the consent of the Legislature of the State for the erection of forts, magazines, arsenals, dock-yards and other needful buildings; nor was there authority given under the Treaty of Guadalupe Hidalgo, authorizing the retention of land after the advent of statehood.

Our question is, can anyone show that the Federal Government purchased the public lands that lay within Nevada's borders by the consent of the State's Legislature. Can anyone produce such documents as will show that there was an act of cession granting the public lands which lay within the State of Nevada to the Federal Government, whereby it was agreed that the Federal Government was to hold such lands temporarily for the purpose of selling the land so as to raise moneys to pay off a war debt. Can anyone show us, why the Court was wrong when it held that the Federal Government could not hold municipal sovereignty, jurisdiction, or right of soil in any territory except for temporary purposes, to execute the trust

which was created by a treaty, (which in this instance, would be the Treaty of Guadalupe Hidalgo)? If not, then it must be concluded that it is unconstitutional for the Federal Government to hold the municipal sovereignty, jurisdiction, eminent domain or right of soil with regards to the public lands which lay within the State of Nevada.

QUESTION 5 (Ownership and the Tidewater Cases)

Some have argued, that the United States holds the public lands that lay within the Western States, simply because the United States owned these lands before States were created; and that the United States is only continuing to own, what it has owned since the signing of the Treaty of Guadalupe Hidalgo. The problem with this argument is the Tidewater Cases - for within them, it is made clear, that by the Equal Footing Doctrine and as an Incident of Sovereignty, the water and lands beneath them must pass to the newly admitted states upon their entry into the Union. And, of course, if the tidelands and the lands that lay beneath the navigable rivers pass to the States as an Incident of Sovereignty and by the Equal Footing Doctrine, why not the unappropriated uplands?

Consider the following cases dealing with TIDELANDS:

Mumford v. Wardwell, 6 Wall. 423-429 (1867)

> California was admitted into the Union September 9, 1850, and the act of Congress admitting her declares that she is so admitted on equal footing, in all respects, with the original states. (9 Stat. at L. 452.) Settled rule of law in this court is that the shores of navigable waters and the soils under the same in the original states were not granted, by the Constitution, to the United States, but

were reserved to the several states; and that the new states since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original states possess within their respective borders. *Pollard v. Hagan*, 3 How. 212.

When the Revolution took place, the people of each state became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them, subject only to the rights since surrendered by the Constitution. *Martin v. Waddell*, 16 Pet. 410. (Emphasis added.)

Weber v. Commissioners, 85 U.S. 57, 18 Wall. 57 (1873)

Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General government. (Emphasis added.)

City and County of San Francisco v. Le Roy, 138 U.S. 656, 11 S. Sup. Ct. 364 (1891)

As to tide-lands, although it may be stated as a general

principle – and it was so held in *Weber v. Board of Harber Comrs.*, 85 U.S. 18 Wall. 57, 65 [21: 798, 802] – that the titles acquired by the United States to lands in California under tide-waters, from Mexico, were held in trust for the future State, so that their ownership and right of disposition passed to it upon its admission into the Union, that doctrine cannot apply to such lands as had been previously granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way. When the United States acquired California it was with the duty to protect all the rights and interests which were held by the pueblo of San Francisco under Mexico. The property rights of pueblos equally with those of individuals were entitled to protection, and provision was made by Congress in its legislation for their investigation and confirmation. *Townsend v. Greeley*, 72 U.S. 5 Wall. 326, 337 [18: 547, 549]. The duty of the government and its power in the execution of its treaty obligations to protect the claims of all persons, natural and artificial, and of course of the City of San Francisco as successor to the pueblo, were superior to any subsequently acquired rights or claims of the State of California, or of individuals. (Emphasis added.)

Parker v. Bird, 137 U.S. 661, 11 S. Sup. Ct. 210 (1891)

In our view of the subject the correct principle was laid down in *Martin v. Waddell*, 41 U.S. Pet. 367 [10: 997] ; *Pollard v. Hagan*, 44 U.S. 3 How. 212 [11 : 565], and *Goodtitle v. Kibbe*, 50 U.S. 9 How. 471 [13 : 220]. These cases related to tide-water, it is true; but they enunciate principles which are equally applicable to all navigable waters. And since this court, in the case of *The Genesse Chief*, 53 U.S. 12 How. 443 [13 :1058], has declared that the Great Lakes and other navigable waters

of the country, above as well as below the flow of the tide, are, in the strictest sense, entitled to the denomination of navigable waters, and amenable to the admiralty jurisdiction, there seems to be no sound reason for adhering to the old rule as to the proprietorship of the beds and shores of such waters.

Knight v. United Land Ass'n 142 U.S. 161, 12 Sup. Ct. 258 (1891)

It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide-waters in the original states were reserved to the several states, and that the new states since admitted have the same rights, sovereignty, and jurisdiction in that behalf as the original states possess within their respective borders. *Martin v. Waddell*, 16, Pet.367, 410; *Pollard v. Hagan*, How. 212, 229; *Goodtitle v. Kibbe*, 9 How. 471, 478; *Mumford v. Wardwell*, 6 Wall. 423, 436; *Weber v. Commissioners*, 18 Wall. 57, 65. Upon the acquisition of the territory from Mexico the United States acquired the title to tide-lands equally with the title to upland; but with respect to the former they held it only in trust for the future states that might be erected out of such territory. Authorities last cited. But this doctrine does not apply to lands that had been previously granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way, (*San Francisco v. Le Roy* , 138 U.S. 656, 11 Sup. Ct. Rep. 364;) for it is equally well settled that when the United States acquired California from Mexico by the treaty of Guadalupe Hidalgo, (9 St. 922,) they were bound, under the eighth article of that treaty, to protect all rights of property in that territory emanating from the Mexican government

previous to the treaty. *Teschemacher v. Thompson*, 18 Cal. 11; *Beard v. Federy*, 3 Wall. 478. (Emphasis added.)

Shively v. Bowlby, 152 U.S. 1 (1894)

In Pollard's Lessee v. Hagan, (1844,) this court, upon full consideration, (overruling anything to the contrary in Pollard v. Kibbe, 14 Pet. 353; Mobile v. Eslava, 16 Pet. 234; Mobile v. Hallett, 16 Pet. 261; Mobil v. Emanuel, 1 How. 95; and Pollard b. Files, 2 How. 591,) adjudged that, upon the admission of the state of Alabama into the Union, the title in the lands below high-water mark of navigable waters passed to the state, and could not afterwards be granted away by the congress of the United States. Mr. Justice McKinley, delivering the opinion of the court, (Mr. Justice Catron alone dissenting,) said: 'We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new states were formed, except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty with the French Republic of the 3th of April, 1803, ceding Louisiana.' 'When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to vest them with it to the same extent, in all respects, that it was held by the states ceding the territories.' 'When Alabama was admitted into the Union on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far

as this right was diminished by the public lands remaining in the possession and under the control of the United States for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands.' 3 How. 221 - 223. "Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine is to deny that Alabama has been admitted into the Union on an equal footing with the original states, the constitution, laws, and compact to the contrary notwithstanding.'

* * *

And the territories acquired by congress, whether by deed of cession from the original states, or by congress, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the Union as states, upon an equal footing with the original states in all respects; and the title and dominion of the tide waters, and the lands under them, are held by the United States for the benefit of the whole people, and, as this court has often said, in cases above cited, 'in trust for future states.' (Emphasis added.)

United States v. Mission Rock Co. , 189 U.S. 391 (1903)

Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future state. Upon the admission of California into the Union upon equal footing with the original states, absolute property in, and dominion and sovereignty over, all soils under the tide waters within her

> limits passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several states, the regulation of which was vested in the general government.' (Emphasis added.)

Commonwealth of Massachusetts v. state of New York, 271 U.S. 65 (1926)

> It is a principle derived from the English common law and firmly established in this country that the title under navigable waters is in the sovereign, except so far as private rights in it have been acquired by express grant or prescription. *Shively v. Bowlby*, 14 S. Ct. 548, 152 U.S. 1. The rule is applied both to the territory of the United States and to land within the confines of the states, whether they are original states (*Johnson v. M'Intosh*, supra; *Martin v. Waddell*, supra) or states admitted into the Union since the adoption of the Constitution (*United States v. Holt State Bank*, 46 S. Ct. 197, 270 U.S. 49. The dominion over navigable waters and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged... (Emphasis added.)

Cases dealing with NON-NAVIGABLE RIVERS:

United States v. State of Utah, 283 U.S. 64 (1931)

> The complaint alleges that by the Guadalupe-Hidalgo Treaty of February 2, 1848, the United States acquired

from the Republic of Mexico the title to all the lands riparian to these rivers, together with the river beds, within the state of Utah, and that the United States remains the owner of these lands, with certain stated exceptions of lands granted by it; that the Green, Colorado, and San Juan rivers throughout their entire length within the state of Utah are not, and never have been, navigable, and that they have not been used, nor are they susceptible of being used, in their natural and ordinary condition as permanent highways or channels for useful commerce within the state of Utah or between states or with any foreign nations: that the United states, as proprietor, has executed and delivered numerous prospecting permits covering portions of the river beds in question, giving to the permittees the exclusive right of prospecting for petroleum, oil, and gas minerals, and that the permittees have entered upon development work; that the state of Utah claims title adverse to the United States in these river beds, asserting that the rivers always have been and are navigable, and that title to the river beds vested in the state when it was admitted to the Union; and that Utah, without the consent or authority of the United States, has executed and delivered numerous oil and gas leases covering portions of these river beds and purporting to give exclusive rights and privileges. The United States asks the claim of Utah to any right, title, or interest in the river beds in question be adjudged to be null and void, that it be determined that the United States has full and exclusive title thereto, and that injunction issue accordingly.

The Court referred the case to Charles Warren as special master to take the evidence and to report it with his findings of fact, conclusions of law, and recommendations for decree.

> Upon his investigation, the Special Master found that portions of these rivers were navigable while others were non-navigable. "On these findings, the master...concluded that the title to the beds of the rivers, where the rivers were found to be navigable...was in the state of Utah, and where the rivers were found to be nonnavigable, was in the United States." (Emphasis added.)

United States v. State of Oregon, 295 U.S. 1 (1935)

This was a suit brought by the United States against the state of Oregon to quiet title to lands lying in the beds of Malheur Lake, Mud Lake, Harney Lake, the Narrows and the Sand Reef. The Court found that the issues raised turned on the question as to whether the waters under which the lands lie were navigable or nonnavigable.

> The issues raised by the pleadings were referred to a special master,... He found that none of the waters within the meander line was navigable in fact and concluded that the state of Oregon had acquired no right, title, or interest in any part of the land lying within the meander line, save as is incidental to the ownership of land acquired by it from patentees of the United States...
>
> Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See Com. Of *Massachusetts v. State of New York*, 271 U.S. 65, 89, 46 S. Ct. 357. For that reason, upon the admission of a state to the Union, the title of the United States to lands underlying navigable waters within the state passes to it,

as incident to the transfer to the state of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce. But if the waters are not navigable in fact, the title of the United States to land underlying them remains unaffected by the creation of the new state. See *United States v. state of Utah*, supra, 283 U.S. 64, 75, 51 S. Ct. 438; *State of Oklahoma v. Texas*, supra, 258 U.S. 574, 583, 591 S., 42 S. Ct. 406. Since the effect upon the title to such lands is the result of federal action in admitting a state to the Union, the question, whether the waters within the state under which the lands lie are navigable or nonnavigable, is a federal, not a local, one. It is, therefore, to be determined according to the law and usage recognized and applied in the federal courts, even though, as in the present case, the waters are not capable of use for navigation in interstate or foreign commerce. [cites omitted] The special master based his conclusion that the waters within the meander line boundary were not navigable in fact on the date of the admission of Oregon to the Union, or afterward, on his finding of fact that; 'Neither trade nor travel did then or at any time since has or could or can move over said Divisions, or any of them, in their natural or ordinary conditions according to the customary modes of trade or travel over water; nor was any of them on February 14, 1859, nor has any of them since been used or susceptible of being used in the natural or ordinary condition of any of them as permanent or other highways or channels for useful or other commerce.' (Emphasis added.)

Cases dealing with MARGINAL LANDS, OR THOSE THAT LAY WITHIN THREE MILES OF AMERICA'S COAST LINE, BEYOND ORDINARY TIDELANDS

United States v. California, 332 U.S. 19 (1947)

The point of difference [in this case] is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land,...

* * *

In the Pollard case it was held, in effect, that the original states owned in trust for their people the navigable tidewaters between high and low water mark within each state's Boundaries, and the soil under them, as an inseparable attribute of state sovereignty. Consequently, it was decided that Alabama, because admitted to the Union on 'an equal footing' with the other states, had thereby become the owner of the tidelands within its boundaries. ...

The Government does not deny that under the Pollard rule, as explained in later cases, California has a qualified ownership of lands under inland navigable waters such as rivers, harbors, and even tidelands down to the low water mark. It does question the validity or the rationale in the uplands, is a necessary incident of the state sovereignty contemplated by the 'equal footing' clause Cf. *United States v. State of Oregon*, 295 U.S. 1, 14, 615. For this reason, among others, it argues that the Pollard rule should not be extended so as to apply to lands under the ocean. It stresses that the thirteen original colonies did not own the marginal belt; that the Federal Government did not seriously assert its increasingly greater rights in this area until after the formation of the Union; that it has

not bestowed any of these rights upon the states, but has retained them as appurtenances of national sovereignty.

... From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it,... At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders.

* * *

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; ...we are not persuaded to transplant the Pollard rule of ownership as an incident of state sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the Pollard case is a valid basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests responsibilities, and therefore national rights are paramount in waters laying to the seaward in the three-mile belt. (Emphasis added.)

United States v. Texas, 143 U.S. 621 (1950)

The "equal footing" clause has long been held to refer to political rights and to sovereignty. See *Stearns v. Minnesota*, 179 U.S. 223, 245. It does not, of course, include stature or standing. ... The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.

Yet the "equal footing" clause has long been held to have a direct effect on certain property rights. Thus the question early arose in controversies between the Federal Government and the States as to the ownership of the shores of navigable waters and the soils under them. It was consistently held that to deny to the states, admitted subsequent to the formation of the Union, ownership of this property would deny them admission on an equal with the original States, since the original States did not grant these properties to the United States but reserved them to themselves. See *Pollard's Lessee v. Hagan*, 3 How. 212, 228-229; *Mumford v. Wardwell*, 6 Wall. 423, 426; *Weber v. Harbor Comm'rs*, 18 Wall. 57 65-66; *Knight v. U.S. Land Assn.*, 142 U.S. 161, 183; *Shively v. Bowlby*, 152 U.S. 152 U.S. 1, 26; *United states v. Mission Rock Co.* 189 U.S. 391, 404. The theory of these decisions was aptly summarized by Mr. Justice Stone speaking for the Court in *United States v. Oregon*, 295 U.S. 1, 14 as follows:

> "Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See Massachusetts v. New York, 271 U.S. 65, 89. For that reason upon the admission of a state to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in

> interstate and foreign commerce." (Emphasis added.)

The "equal footing" clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the dominium and imperium in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an equal footing" with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.

We stated the reasons for this in *United States v. California*, supra, at p. 35, as follows:

> It must have power of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered "The three-mile rule is

> but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may change detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States v. Belmont*, 301 U.S. 324, 331-332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement."

> And so although dominium and imperium are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.

It seems strange indeed, that the Court should held that the soils beneath navigable waters should pass to the Western States upon their admission to the Union, while the unappropriated uplands should not.

Our question is; first, can anyone produce legal authority which shows why it might be, that the lands beneath Navigable Rivers and Tideland should pass to the States as an Incident of Sovereignty and pursuant to the Equal Footing Doctrine and the Treaty of Guadalupe Hidalgo and the uplands should not; and

can anyone cite authority within the Constitution or the Treaty of Guadalupe Hidalgo, which authorizes the Federal Government to retain the public lands within a State, after a State is admitted to the Union?

QUESTION 6 (Treaties, the Unalienable Rights Doctrine, and the right of each State to exercise municipal sovereignty, jurisdiction and eminent domain over all the territory within its borders.)

Article VI, Clause 2, reads, "This Constitution, and the laws of the United States which shall be made in Pursuance thereof: and all Treaties made, or have been made, under the Authority of the United States, shall be the Supreme Law of the Land..." (Emphasis added.)

Article III, of the treaty for the purchase of the Louisiana Territory reads:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the federal Constitution to the enjoyment of all these rights, advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the Religion which they profess.

Article VI, of the treaty for settlement and acquisition of the Florida Territory reads:

> The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States as soon as

> may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States.

Article IX, of the Treaty of Guadalupe Hidalgo reads:

> The Mexicans [or persons living therein]... shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without; restriction.

These treaties may not have granted the Federal Government the authority to retain the public lands (or water) which lay within a State's borders after a State is created and admitted to the Union, but certainly, they require that persons living therein be afforded every right which is enjoyed by citizens living within the remainder of the United States.

In this regard, these treaties uphold the Unalienable Rights Doctrine which is found in the Declaration of Independence; for not only is it stated within these treaties, that the inhabitants living therein are to be afforded every right recognized as belonging to persons living elsewhere within the Union, after States are created, but it is stated that the rights of the inhabitants should be maintained and protected during that period before States are created.

It may be true that persons living within a territory may not be afforded the same political rights as are persons living within

an admitted State of the Union, but that does not mean that they cannot, or should not be afforded the same personal rights as are citizens of admitted States. And of course, once such persons are brought into the Union, by the Declaration of Independence, by the Constitution, by the Equal Footing Doctrine and by the Treaties cited above, they are to be afforded all of their God given and constitutionally protected rights, both political and personal, no matter where they may be standing when a conflict arises. (Except, of course, if a person is within a federal enclave, which enclave is acquired in pursuance to Art. I, Sec. 8, Cl. 17 of the Constitution, and then of course, the Federal Government may be exempt from the Constitutional requirement that persons be afforded all of their constitutionally protected rights.)

In *Pollard v. Hagan*, 44 U.S. 212, 228 and *Coyle v. Smith*, 221 U.S. 559, 572, the Court said:

> Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine is to deny that Alabama has been admitted into the Union on an equal footing with the original States, the Constitution, laws, and compact to the contrary notwithstanding. (Emphasis added)

And at 44 U.S. 212, 224, in the Pollard Case, the Court said (when speaking of Alabama and the acts of cession):

> The object of all the parties to these contracts of cession, was to convert the land into money for the payment of the debt, and to erect new states over the territory thus ceded; and as soon as these purposes could be accomplished, the power of the United States over these lands, as property, was to cease. Whenever the United States shall have fully

executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states, will be upon an equal footing, in all respects whatever. (Emphasis added.)

The Court, in these two cases, made it abundantly clear, an admitted State is not placed on an equal footing with its sister States, until such time as the State is placed under a situation whereby it exercises municipal sovereignty, jurisdiction, and eminent domain over all of the lands (excluding federal enclaves) which lay within its borders: not just the lands that are privately owned, but all of the lands, including the unappropriated or public lands which lay within its borders.

Our question is. Is there anyone who knows of later court decisions which address the issue of whether or not a State is put on an Equal Footing with its sister States, when it is not able to exercise municipal sovereignty, jurisdiction and eminent domain over all of the lands (excluding federal enclave lands) which lay within its borders? And too, can anyone cite law which shows that the Unalienable Rights Doctrine and the requirements of the Declaration of Independence, and the treaties above mentioned, should not be upheld and applied uniformly within a State's borders?

And is there anyone who has information which counters the findings in the Pollard and Coyle cases; which show that the Court has found that admitted States do not posses the right to exercise municipal sovereignty, jurisdiction, and eminent domain over all the lands that lay within their boarders (which have not been sold to the general government under the authority of Art. I. Sec. 8. Cl. 17)?

QUESTION 7 (The Right to be governed by State and

Common Law)

In *Ruckelshaus v. Monsanto Co.* 467 U.S. 986, at 1001 the Court said:

> " '[p]roperty interests...are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law' " *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161, 66 L Ed 2d 358, 101 S Ct 446 (1980), quoting *Board of Regents v. Roth*, 408 U.S. 564, 577, 33 L Ed 2d 548, 92 S Ct 2701 (1972).

However, when persons are made subject to Congress' Article IV powers, a person's rights are only those which are granted by Congress. State and Common law does not apply; see *Murphy v. Ramsey*, 114 U.S. 15, *Church of Jesus Christ of Later-Day Saints v. United States*, 136 U.S. 1, *Ansolabehere v. Laborde* , 310, P. 2d 842, 845 (Nev. 1957) (Nevada Stockwatering Act of 1925 is superceded by the Taylor Grazing Act), *Hage v. United States*, No. 91-1470L, decided Jan. 29, 2002.

It is a well recognized doctrine in law, that the 5th Amendment to the Constitution does not define property. The 5th Amendment only requires there be due process and just compensation when property is taken. Property, the Court has held, is defined by State and Common Law.

In the History of this Nation, only those who have been made subject to Article IV jurisdiction, as it has been applied more recently, have been deprived of our Constitution's protections and the right to be governed by the Common Law. Even those persons who were living within the Northwest Territory, prior

to the creation of States in that region, were afforded their right to be governed by the Common Law. (See the court appointment clause and Articles, 1, 2 and 3, of the Northwest Ordinance)

Our question is, can anyone cite case law which shows that the citizens of the Western States are not deprived of their right to be governed by State and Common Law (including their right to have property interest defined by State legislation or the Common Law, when they are made subject Congress's so called Article IV jurisdiction?

Can anyone show that the exercise of Article IV jurisdiction within the Western States, does not deprive the Ranching Families of the West, recognition and protection of their right to graze the public land, which otherwise would be recognized and protected by state and common law?

Can anyone argue, that "federally created rights" (unlike common law rights) can not be set aside by later legislation, as was the case in the matter of *Murphy v. Ramsey*, 114 U.S. 15?

QUESTION 8 (The right of persons to be protected by a division of power between the State and the federal government)

It is stated in the *American Insurance Co. v, Canter*, 26 U.S. 511, *Benner v. Porter*, 50 U.S. 235, *Downes v. Bidwell*, 182 U.S. 244, *Church of Jesus Christ of Later-Dat Saints v. United States*, 136 U.S. 1, when the Federal Government acts in pursuance of its Article IV powers, it acts both as the State and the Federal Government. In *Kleppe v. New Mexico*, 426 U.S. 529, 539, the Court said, "...even over public land within the States, "[t]he general Government doubtless has a power over its own property analogous to the police power of the several

States,..."

You will notice, in the language of the treaties, cited above, it is not stated that States shall be created and brought into the Union and under the Constitution, it is stated that it is the people or the inhabitants, which are to be brought into the Union and under the Constitution. Which calls attention to the fact, that the primary purpose of the Constitution and our form of government is not to protect the interest of the government or the majority, but to protect the rights of the people as individuals. This truth can not be illustrated better than it is in *New York v. United States*, 505, U.S. 144, at 181, wherein the Court states:

> The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between the federal and state governments for the protection of individuals. State sovereignty is not just an end in itself; "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power" *Coleman v. Thompson*, 501 U.S. –, 114 L ed 2d 640, 111, S Ct 2546 (1991). "Just as the separations and independence of the coordinated Branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ahcroft*, 501 U.S. 552, 155 L ed 2d 120, 112 S Ct (1992). See The Federalist No. 51, p 323. (Emphasis added.)

In the Federalist at No. 51, page 323, it is stated:

> There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

In *Northern Pipeline Construction Co. v. Marathon*, 458 U.S. 50, at 57, the Court said:

> "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47, p 300 (H. Lodge ed 1888). (Emphasis added)

Our question is, can anyone deny that persons living within the State of Nevada are stripped of their right to be protected by the Separations of Power Doctrine when they are made subject to Congress' so called Article IV jurisdiction? And too, can anyone deny the tyranny which is now occurring here in our State because of the Federal Government's absolute control over the majority of land and resources which lay within our State's borders; wherein the Constitution does not apply and the common law is suspended; wherein, state authority is made subordinate to the Feds authority; wherein property rights are

not recognized and permits are issued in their place (to those who cooperate); wherein, business people must learn, that in order to survive, you must keep your mouth shut and your head down, or you will be persecuted or destroyed economically?

QUESTION 9 (The right to be tried by a court which acts as a constitutional court, rather than a legislative court)

The fact that the courts have recognized, that under our system of government, there are varying kinds of courts with differing responsibilities has been long established. In *Ex Parte Bakelite Corporation,* 279 U.S. 438, at 449, the Court said:

> ...it has long been settled that article 3 does not express the full authority of Congress to create courts, and that other articles invest Congress with powers in the exertion of which it may create inferior courts and clothe them with functions deemed essential or helpful in carrying those powers into execution. But there is a difference between the two classes of courts. Those established under the specific power given in section 2 of article 3 are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exertion of other powers are called legislative courts, Their functions always are directed to the execution of one or more of such powers, and are prescribed by Congress independently of section 2 of article 3; and their judges hold for such term as Congress prescribes, whether it be a fixed period of years or during good behavior.

The first pronouncement on the subject by this Court was in *American Insurance Co. v. Canter,* 1 Pet. 551- 279 U.S. 438, 450, where the status and jurisdiction of courts created by Congress for the Territory of Florida were drawn in question. Chief Justice Marshall, speaking for the court, said (page 546):

> 'These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not apart of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States.'

That ruling has been accepted and applied from that time to the present in cases relating to territorial courts. *Benner v. Porter,* 9 How. 235, 242 (13 L. Ed. 119); *Clinton v. Englebrocht, Wall.* 434, 447 (20L Ed. 659); *Hornbuckle v. Toombs,* 18 Wall. 648, 655 (21 L. Ed. 966); *Goodv. Martin,* 95 U.S. 90, 98 (24 L. Ed. 341); *Reynolds v. United States,* 98 U.S. 145, 154 (25 L. Ed. 244); *City of Panama,* 101, U.S. 453, 460 (25 L. Ed. 1061); *McAllister v. United States,* 141 U.S. 174, 180 et seq., 11 S. Ct. 949 (35 L. Ed. 693); *Romeu v. Todd,* 206 U.S. 358, 368, 27 S. Ct. 724 (51 L. Ed.1093).

(Emphasis added)

In 1828, Congress passed an act establishing a Territorial Court for the Southern District of Florida. Florida was admitted to the Union on March 3, 1845. On March 24, 1846, Joseph Porter filed a libel suit against Hiram Benner in Territorial Court. On the 14th of May, 1847, the case was transferred to the District Court of the United States. The District Court ruled that the Territorial Court and its jurisdiction were abolished by the admission of Florida as a State on the 3rd of March 1845. Upon appeal the Supreme Court Said:

> After the unconditional admission of the territory [Florida] into the Union as a State, on the 3d of March, 1845, with her constitution, and complete organization of the government under it, by which the authority of the State was established throughout her limits, it is difficult to see upon what ground it can be maintained that any portion of the territorial government or jurisdiction remained still in force.

> The distinction between the federal and State jurisdictions, under the Constitution of the United States, has no foundation in these territorial governments; and consequently, no such distinction exists, either in respect to the jurisdiction of their court or the subjects submitted to their cognizance. They are legislative governments, and their courts legislative courts, Congress in the exercise of its powers in the organization and government of the territories, combining the powers of both the federal and State authorities.
>
> * * *
>
> We think it clear, therefore, that on the unconditional admission of Florida into the Union as a State,... the

territorial government was displaced, abrogated, every part of it; and that no power of jurisdiction existed within her limits, except that derived from the State authority, and that by force and operation of the federal Constitution and laws of Congress; and, especially no jurisdiction in federal cases until Congress interfered and extended the judicial tribunals of the Union over it.

* * *

The admission of the State into the Union brought the territory under the full and complete operation of the federal Constitution, and the judicial power of the Union could be exercised only in conformity to the provisions of that instrument.

* * *

Congress must not only ordain and establish inferior courts within a State, and prescribe their jurisdiction, but the judges appointed to administer them must possess the constitutional tenure of office before they can become invested with any portion of the judicial power of the Union. There is no exception to this rule in the Constitution. The territorial courts, therefore, were not courts in which the judicial power conferred by the Constitution on the federal government could be deposited. They were incapable of receiving it, as the tenure of the incumbents was but for four years. 1 Peters, 546. Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a State.

* * *

The State authority was destructive of the territorial; and, in connection with the establishment of the federal jurisdiction, the organization of the federal jurisdiction, the organization of the government, State and federal, under the Constitution of the Union, became complete

throughout her limits. No place was left unoccupied for the territorial organization. (Emphasis added.)

This all seems plain enough. First the Court is saying that neither a territorial court, nor a territorial government can continue after a State is admitted to the Union, and second, the Court is saying that Congress cannot, under the Constitution, confer territorial or Article IV powers on a Court which is organized within a State.

The Court is also saying, that a court which is organized under the third article of the Constitution, must act in "conformity" to the Constitution. In other words, an Article III court cannot hear an Article IV matter, for in order to do so, the court would in fact, be ignoring a person's right to be protected by the Constitution guarantees. In other words, a constitutional court cannot act with disregard for a persons rights, and still be acting in compliance with the Constitution.

Almost fifty years later, the above findings were upheld in *Downes v. Bidwell*, 182 U.S. 244, 266, wherein the Court said:

It is sufficient to say that this case [the American Insurance Co. case] has ever since been accepted as authority for the proposition that the judicial clause of the Constitution has no application to courts created in the territories, and that with respect to them Congress has a power wholly unrestricted by it.

* * *

This case was followed in *Benner v. Porter*, 9 How. 235, 13 L. ed. 119, in which it was held that the jurisdiction of these territorial courts ceased upon the admission of Florida into the Union, Mr. Justice Nelson remarking of them (p. 242, L. ed. P, 122), that "they are not organized under the Constitution, nor subject to its complex

> distribution of the powers of government, as the organic law; but are the creations, exclusively, of the legislative department, and subject to its supervision and control. ...Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state." (Emphasis added.)

So what has happened since; that it is now accepted that Article III, or territorial jurisdiction can be exercised within admitted States of the Union, and that Article III courts can hear questions arising under the authority of Article IV (as the are now doing? Can anyone point to any one case where the *Benner v. Porter* case and the *Downes v. Bidwell* case have been discussed and overturned? We can not find that they have been. In fact, in 1982, in *Northern Pipeline Co. v. Marathon*, 458 U.S. 50 (1982), the Court said:

> ...the Framers intended that as to certain geographical areas, in which no State operated as sovereign, Congress was to exercise the general powers of government. For example, in *American Ins. Co. v. Canter*, ...the Court observed that Art. IV bestowed upon Congress alone a complete power of government over territories not within the States that comprised the United States. The Court then acknowledged Congress' authority to create courts for those territories that were not in conformity with Art. III. (Emphasis added.)

Our question is; first, can anyone find where the Court has addressed these rulings specifically, and overturned them or declared them unconstitutional? Second, can anyone find case law which supports the notion, that a constitutional court can act as a legislative court? And third, can anyone find case law

whereby the Court has stated that a constitutional court can deprive a citizen of an admitted State of the Union, of their constitutional rights, either in a proceeding or in the protection thereof?

And too, can anyone find case law, whereby the Court has ruled that the Separations of Power Doctrine is not violated when an Article III court acts as a legislative court?

QUESTION 10 (Misinterpretation of the Supremacy Clause)

Within *California Coastal Commission v. Granite Rock*, 480 U.S. 572, at 580 it is stated:

> The Property Clause provides the "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art, 3, cl. 2. This Court has "repeatedly observed" that "[t]he power over the public land thus entrusted to Congress is without limitations.' "Kleppe v. New Mexico, 426 U.S. 529, 539 (1976), quoting United States v. San Francisco, 310 U.S. 16, 29 (1940). Granite Rock suggests that the Property Clause not only invests unlimited power in Congress over the use of federally owned lands, but also exempts federal lands from state regulation whether or not those regulations conflict with federal law. In assertion that the Secretary of the Interior had even proposed such an interpretation of the Property Clause. We made clear that "the State is free to enforce its criminal and civil laws" on federal land so long as those laws do not conflict with federal law. Ibid. The Property Clause itself does not automatically conflict with all state regulation of federal

> land. Rather, as we explained in Kleppe: "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." Ibid. (Emphasis added.)

By this decision, it appears that the Court now assumes that the Article IV powers of Congress are equivalent to any of the enumerated powers which can be lawfully exercised within admitted States. However, the question remains: can the Federal Government exercise a species of jurisdiction within an admitted State (when not acting in pursuance of Article I, Section 8, Clause 17) which strips the citizens of their constitutionally protected rights?

We are aware that the Federal Government has been given the authority to raise armies and conduct warfare; and we know that the Federal Government has been given the authority to exercise Admiralty and Maritime jurisdiction. But this does not mean these kinds of authority, which strip persons of their constitutionally protected rights, can be exercised within admitted States? Unlike other enumerated powers that can be lawfully exercised within admitted States, the power that is derived from Article IV (as it is now defined by the courts) is all encompassing. It is plenary, it is without limitation, it overrides conflicting State law, and it places the Congress in a position whereby it can deprive citizens of any or all of their God given rights at will.

Our question is; can anyone produce evidence which shows that it was the intent of the Founders, that the Federal Government should be granted the authority (outside of the

authority given in Art. I, Sec. 8, Cl. 17) to implement law within an admitted State which strips the citizens living therein of their God given and constitutionally protected rights?

QUESTION 11 (The right of jurisdiction over the State's waters as an incident of sovereignty rather than by an act of Congress)

In *Martin v. Waddell*, 16 Pet. 410, the Court said:

> ...when the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government. (Emphasis added.)

The Court in *Coyle v. Smith*, further stated at 221 U.S. 559, at 571:

> The case of Pollard v. Hagan, 3 How. 212, 11 L. ed. 565, is a most instructing and controlling case. It involved the title to the submerged lands between the shores of navigable waters within the state of Alabama. The plaintiff claimed under a patent from the United States, and the defendant under a grant from the state. The plaintiff relied upon two propositions which are relevant to the question here. One was that, in the act under which Alabama was admitted to the Union [3 Stat. At L. 489, chap. 47], there was a stipulation that the people of Alabama forever disclaimed all right or title to the waste or unappropriated lands lying [221 U.S. 559, 571] within the state, and that they should remain at the sole disposal of the United States; and a second, that all of the

navigable waters within the state should forever remain public highways and free to the citizens of that state and of the United States, without any tax, duty, or impost imposed by the state. These provisions were relied upon as a 'compact' by which the United States became possessed of all such submerged lands between the shores of navigable rivers within the state.

Points decided were:

First, following Martin v. Waddell, 16 Pet. 410, 10 L. ed. 1012, that prior to the adoption of the Constitution, the people of each of the original states 'hold the absolute right to all their navigable waters and the soil under them for their own common use, subject only to the rights since surrendered by the Constitution.'

Second. Alabama had succeeded to all the sovereignty and jurisdiction of all the territory within her limits, to the same extent that Georgia possessed it before she ceded that territory to the United States.

Third. That to Alabama belong the navigable waters, and soils under them. (Emphasis added.)

In *Coyle v. Smith*, 221 U.S. 559, 566, the Court said:

The definition of 'a state' is found in the powers possessed by the original states which adopted the Constitution, -a definition emphasized by the terms employed in all subsequent acts of Congress admitting new states into the Union. The first two states admitted into the Union were the states of Vermont and Kentucky, one as of March 4, 1791, and the other as of June 1, 1792. No terms or conditions were exacted from either.

The point being, that since the Original States obtained absolute sovereignty and jurisdiction over the waters which lay within their borders upon the conclusion of the Revolutionary War, so do the later admitted States hold absolute sovereignty and jurisdiction over the waters that arise within their borders. Unfortunately however, in recent times, the courts have been adjudicating matters involving waters which arise on the public lands which lay within admitted States as though the Federal Government is the underlying sovereign. See *Cappaert v. United States*, 426 U.S. 128, and *Hage v. United States*, No. 91-1470L, decided Jan. 29, 2002.

In the *Cappaert* case, the Court found that, first, the Federal Government could claim a federal reserved water right, upon public lands and the lands adjacent to the public lands, within an admitted State after the State in question was admitted to the Union. And second, the Federal Government need not take steps to perfect its rights with the state. And third, the Court found that cases in controversy involving claims by the United States need not be tried in State Court, but could be brought before a Federal District Court.

In the *Hage* case, at page 8, the court states; "It has long been a principle of water law that state law controls where it is not directly superceded by federal law. Indeed, it "is settled that the states may prescribe police regulations applicable to public land areas, so long as the regulations are not arbitrary or inconsistent with applicable congressional enactments." *Mckelvey v. United States*, 260 U.S. 353, 359 (1922). And at page 9 of the *Hage* decision, the court states; "The Nevada Supreme Court, when examining the intersection of Nevada water law and the Taylor Grazing Act, reiterated that where the federal government has not acted, the state may act. *Ansolabehre v. Laborde*, 310 P. 2d 842, 845 (Nev. 1957)" (In Ansolabehre it was found that the Nevada Stockwatering Act of

1925 was superceded when it came in conflict with the Taylor Grazing Act).

What this means is, in the Court's mind, it is not the States which are sovereign over waters which arise upon the public lands which lay within the admitted States of the West, it is the Federal Government that is the sovereign. In other words, as far as the courts are concerned, the States are only acting in pursuance of the authority given them by the Act of 1866 when they adjudicate waters which are found upon the public lands. This places the Western States in a very serious situation. In Nevada, nearly every drop of water used is derived from lands which are claimed by the Federal Government. And with the court saying in the Hage decision, that, "It has long been a principle of water law that state law controls where it is not directly superceded by federal law." it can be seen, what the citizens of the Western States are up against.

Our question is; first, can anyone find evidence which shows that the courts are not treating the Federal Government as if it is the underlying sovereign over the waters that lay within our State's borders when it renders its decisions regarding water disputes here in the West? And second, can anyone explain, why it would be, that the waters which lay within an admitted State of the Union, would not pass to the State upon its admission to the Union?

QUESTION 12 (*United States v. Texas* and the Equal Footing Doctrine)

In *United States v. Texas*, 339 U.S. 707, the Court said:

> The "equal footing" clause has long been held to refer to political rights and to sovereignty. See *Stearns v.*

> *Minnesota*, 179 U.S. 223. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns v. Minnesota*, *supra*, pp. 243-245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty. (Emphasis added.)

This is precisely our point. It is true, the Equal Footing Doctrine does not guarantee economic equality among States. However, a State cannot be said to posses sovereignty over its territory (or within its realm of authority which is granted it by the Constitution) when it is said that the Federal Government's authority over the majority of a State's land is a power that is without limitation; that it exercises both the power of the State and the Federal Government; and that all State law must yield when it is found to be in conflict with federal law. Nor can it be said that a State has been made equal, with regards to its political standing or sovereignty, when its people are deprived of their rights, both political and personal, on the majority of lands which lay within its borders. A State cannot (in its realm of power) be servient and sovereign at the same time.

The notion suggested in the above cited decision; that there can be varying amounts of land held by the Federal Government within admitted States under varying jurisdictions (whereby persons can be stripped of their Constitutionally protected rights) does not square with either the intent of the Equal

Footing Doctrine, or the decisions this far discussed. Such a notion is not supported by the *Pollard v. Hagan* case, wherein it is stated that a State is not placed on an equal footing with its sister States until such time that it exercised all of the municipal sovereignty, jurisdiction and eminent domain over all of the lands within its limits. It is not supported by the *Pollard v. Hagan* case, the *Coyle v. Smith* case, nor the *Shively v. Bawlby* case wherein it is stated that Alabama and other new States are entitled to the sovereignty and jurisdiction over all the territory which lays within their limits. It is not supported by the *Pollard v. Hagan* case wherein "eminent domain" as used therein, is defined as "The right which belongs to the society, or to the sovereign, of disposing, in case of necessity, and for the public safety, of all the wealth contained in the state, is called the eminent domain." It is not supported by the *Pollard v. Hagan* case and the *Shivley v. Bowlby* case wherein it is stated that there are only two ways under which the Federal Government can hold territory under the Constitution. One being by the authority of Art. I, Sec. 8, Cl. 17, and the other being by compact or treaty - and therefore, by the Treaty of Guadalupe Hidalgo and the treaty for the purchase of the Louisiana Territory, there is no such authority given.

Persons living within the Public Land States do not have the same political advantages as do citizens living within the Eastern States. We are not equal in our sovereignty - either as States or as individuals. Upon the adoption of the Constitution, there were three sovereigns recognized. First, there were the States with their Police Powers. Then there was created a federal government with its Enumerated Powers. But most important was the residue of powers left to the people, who's God given rights cannot be infringed by either the States or the Federal Government; which include the peoples right to be protected by the Separation of Powers Doctrine, the right of local self government, the right to be protected by the Treaty Clause that

is written into Article III, Sec. 2 and Article VI, Cl. 2, of the Constitution, the right to be tried by a Common Law court, as well as all other rights which are provided for under the Constitution and Bill of Rights and which are defined by the Common Law.

As was stated in *New York v. United States*, "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

This is what the equal footing doctrine is all about. The Founders did not intend that new States be brought into the Union for the purpose of benefitting the State per se. Rather States must be brought into the Union on an equal footing for the purpose of protecting the rights of individuals. Economic equality is not the concern of we Nevadans. Our concern is the loss of personal and political rights; and the resulting corruption that is now manifesting as a result of the abridgments of constitutional principle. The intimidation that occurs when one entity owns and controls the majority of resources which lay within a State or community can not be denied. As was stated by Hamilton, in the Federalist No. 79, p. 491 (1881), "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

What the Founders feared has come true; today in Nevada and in other Western States, almost everyone's economic well-being is dependant upon the permitting processes of the Federal Government. Recognition of State and Common Law rights are

shorn away by the exercise of Congress' so called Article IV jurisdiction. There is no recognition for State recognized property interest. There is no security. There are only permits which are issued by the Feds, which can be withheld or canceled at any time. Mining, ranching and timbering interest, and even those who depend on the public lands for recreational opportunity have learned, that in order to survive "they must keep their heads down and their mouths shut". This puts the Feds in near complete control, both politically and economically. It also feeds corruption, for when so much power is placed in so few hands, whereby a mere permit, either granted or withheld, can make or break an individual or business, payoffs emerge; be they political or otherwise. In Nevada today, most of the payoffs are political, for whoever supports the Federal Government and its policy fares best in the outcome of their enterprise. Which leads to a situation whereby the Feds are becoming stronger and stronger while the private sector is becoming more and more subdued.

Our question is, can anyone deny that the exercise of the Government's so called Article IV jurisdiction within the Western States is leading this country toward further corruption and eventual destruction?

And too, can anyone argue that we citizens living within the Public Land States are <u>not</u> deprived of political equality and right of sovereignty, when we are not afforded our right to be protected by the Separation of Powers Doctrine, the right of local self government, the right to be protected by the Treaty Clause that is written into Article VI, Cl. 2, of the Constitution, the right to be tried by a Common Law court, and all the other rights which are provided for under the Constitution and Bill of Rights and which are defined by the Common Law, when we are made subject to Congress' so called Article IV jurisdiction, when it is applied within our State's borders?

QUESTION 13 (The findings of Chief Justice Taney in the Dred Scott case)

In *Dred Scott v. Sandford*, 60 U.S. 393 the Court states with absolute clarity (in ten instances) that the Property Clause can only be applied to that territory which was claimed by the United States by the original states soon after the conclusion of the Revolutionary war, and that it can not be applied to lands or territory afterward acquired by the United States.

At 60 U.S. 393, 432, the Chief Justice states:

> The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;' but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.

At 60 U.S. 393, 436, the Chief Justice further states:

> And moreover, there were many articles of value besides this property in land, such as arms, military stores, munitions, and ships of war, which were the common property of the States, when acting in their independent characters as confederates, which neither the new

> Government nor any one else would have a right to take possession of, or control, without authority from them; and it was to place these things under the guardianship and protection of the new Government, and to clothe it with the necessary powers, that the clause was inserted in the Constitution which give Congress the power ' to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United State.' It was intended for a specific purpose, to provide for the things we have mentioned. It was to transfer to the new Government the property then held in common by the States, and to give to that Government power to apply it to the objects for which it had been destined by mutual agreement among the States before their league was dissolved. It applied only to the property which the States held in common at that time, and has no reference whatever to any territory or other property which the new sovereignty might afterwards itself acquire.
>
> * * *
>
> The power is given in relation only to the territory on the United States–that is, to a territory then in existence, and then known of claimed as the territory of the United States.

At 60 U.S. 393, 437, the Chief Justice further states:

> No one, it is believed, would think for a moment of deriving the power of Congress to make needful rules and regulation in relation to property of this kind from this clause of the Constitution. Nor can it, upon any fair construction, be applied to any property but that which the new Government was about to receive from the confederated States.
>
> * * *
>
> Now, as we have before said, all of the States, except

North Carolina and Georgia, had made the cession before the Constitution was adopted, according to the resolution of Congress of October 10 1780. The claims of other States, that the unappropriated lands in these two States should be applied to the common benefit, in like manner, was still insisted on, but refused by the States. And this member of the clause in question evidently applies to them, and can apply to nothing else. It was to exclude the conclusion that either party, by adopting the Constitution, would surrender what they deemed their rights. And when the latter provision relates so obviously to the unappropriated lands not yet ceded by the States, and the first clause makes provision for those then actually ceded, it is [60 U.S. 393, 438] impossible, by any just rule of construction, to make the first provision general, and extend to all territories, which the Federal Government might in any way afterwards acquire, when the latter is plainly and unequivocally confined to a particular territory...

At 60 U.S. 393, 440, the Chief Justice further states:

The words 'needful rules and regulations' would seem, also, to have been cautiously used for some definite object. They are not the words usually employed by statesmen, when they mean to give the powers of sovereignty, or to establish a Government, or to authorize its establishment. Thus, in the law to renew and keep alive the ordinance of 1787, and to re-establish the Government, northwest of the river Ohio.' And in the Constitution, when granting the power to legislate over the territory that may be selected for the seat of Government independently of a State, it does not say Congress shall have power 'to make all needful rules and regulations respecting the territory; but it declares that

'Congress shall have power to exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States.

The words 'rules and regulations' are usually employed in the Constitution in speaking of some particular specified power which it means to confer on the Government, and not, as we have seen, when granting general powers of legislation. As, for example, in the particular power to Congress 'to make rules for the government and regulation of the land and naval forces, or the particular and specific power to regulate commerce;' 'to establish an uniform rule of naturalization;' 'to coin money and regulate the value thereof.' And to construe the words of which we are speaking as a general and unlimited grant of sovereignty over territories which the Government might afterwards acquire, is to use them in a sense and for a purpose for which they were not used in any other part of the instrument. But if confined to a particular Territory, in which a Government and laws had already been established, but which would require some alterations to adapt it to the new Government, the words are peculiarly applicable and appropriate for the purpose.

And at 60 U.S. 393, 441, the Court further stated:

The necessity of this special provision in relation to property and the rights of property held in common by the confederated States, is illustrated by the first clause of the sixth article. This clause provides that 'all debts, contracts, and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the

Confederation.' This provision, like the one under consideration, was not a mere change in a dynasty, or in a form of government, leaving the nation or sovereignty the same, and clothed with all the rights, and bound by all the obligations of the preceding one. But, when the present United States came into existence under the new Government, it was a new political body, a new nation, for the first time taking its place in the family of nations. It took nothing by succession from the Confederation. It had no right, as its successor, to any property or rights of property which it had acquired, and was not liable for any of its obligations. It was evidently viewed in this light by the framers of the Constitution. And as the several States would cease to exist in their former confederated character upon the adoption of the Constitution, and could not, in that character, again assemble together, special provisions were indispensable to transfer to the new Government the property and rights which at that time they held in common; and at the same time to authorize it to lay taxes and appropriate money to pay the common debt which they had contracted; and this power could only be given to it by special provisions in the Constitution. The clause in relation to the territory and other property of the United States provided for the first, and the clause last quoted provided for the other. They have no connection with the general powers and rights of sovereignty delegated to the new Government, and can neither enlarge nor diminish them. They were inserted to meet a present emergency, and not to regulate its powers as a Government.

Indeed, a similar provision was deemed necessary, in relation to treaties made by the Confederation; and when in the clause next succeeding the one of which we have last spoken, it is declared that treaties shall be the supreme

law of the land, care is taken to include, by express words, the treaties made by the confederated States. The language is: 'and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.'

Whether, therefore, we take the particular [60 U.S. 393, 442] clause in question, by itself, or in connection with the other provisions of the Constitution, we think it clear, that it applies only to the particular territory of which we have spoken, and cannot, by any just rule of interpretation, be extended to territory which the new Government might afterwards obtain from a foreign nation. Consequently, the power which Congress may have lawfully exercised in this Territory, while it remained under a Territorial Government, and which may have been sanctioned by judicial decision, can furnish no justification and no argument to support a similar exercise of power over territory afterwards acquired by the Federal Government. ... (Underlines added).

...[T]he case of the *American and Ocean Insurance Companies v. Canter* (1 Pet., 511) has been quoted as establishing a different construction of this clause of the Constitution. There is, however, not the slightest conflict between the opinion now given and the one referred to; and it is only by taking a single sentence out of the latter and separating it from the context, that even an appearance of conflict can be shown. We need not comment on such a mode of expounding an opinion of the court. Indeed it must commonly misrepresent instead of expounding it. And this is fully exemplified in the case referred to, where, if one sentence is taken by itself, the opinion would appear to be in direct conflict with that now given; but the words which immediately follow that

sentence show that the court did not mean to decide the point, but merely affirmed the power of Congress to establish a Government in the Territory, leaving it an open question, whether that power was derived from this clause in the Constitution, or was to be necessarily inferred from a power to acquire territory by cession from a foreign Government. The opinion on this part of the case is short, and we give the whole of it to show how well the selection of a single sentence is calculated to mislead.

The passage referred to is in page 542, in which the court, in speaking of the power of Congress to establish a Territorial Government in Florida until it should become a State, uses the following language:

'In the mean time Florida continues to be a Territory of the United States, governed by that clause of the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result, necessarily, from the facts that it is not within the jurisdiction of any particular [60 U.S. 393, 443] State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source from which the power is derived, the possession of it is unquestionable.'

It is thus clear, from the whole opinion on this point, that the court did not mean to decide whether the power was derived from the clause in the Constitution, or was the necessary consequence of the right to acquire. They do decide that the power in Congress is unquestionable, and

> in this we entirely concur, and nothing will be found in this opinion to the contrary. The power stands firmly on the latter alternative put by the court–that is, as "the inevitable consequence of the right to acquire territory.'
>
> And what still more clearly demonstrates that the court did not mean to decide the question, but leave it open for future consideration, is the fact that the case was decided in the Circuit Court by Mr. Justice Johnson, and his decision was affirmed by the Supreme Court. His opinion at the circuit is given in full in a note to the case, and in that opinion he states, in explicit terms, that limits the clause of the Constitution applies only to the territory then within the limits of the United States, and not to Florida, which had been acquired by cession from Spain. (Underline added)

In researching this issue, we have found no discussion within later Supreme Court decisions which addresses this ruling in such a way as to overrule it. We can only conclude, that the Court, in later decisions, has only assumed that Congress' so called Article IV jurisdiction can be applied within admitted States of the Union.

There have been decisions rendered which cite *United States v. Gratiot*, 39 U.S. 526, as setting forth precedence authorizing the exercise of Art. IV jurisdicion within the Western States. However, it must be understood that the question in the Gratiot case involved lands which were situated partly within Illinois, and partly within Wisconsin - which states are carved out of territory which was ceded by Virginia to the United States. In other words, these states were once a part of the Northwest Territory, which was under the authority of Article IV of the Constitution; while states carved out of later acquired territory are not subject to Article IV jurisdiction according to the Pollard

Doctrine and the Dred Scott decision.

Our question is, is there anyone who can find where the Supreme Court has specifically addressed these findings and stated that they are overruled? If not, we must assume that these findings are correct; and that the jurisdiction which the Forest Service and Bureau of Land Management are operating under, is nothing more than territorial, or international, authority, which cannot, under any circumstance, be exercised within an admitted State of the Union.

QUESTION 14 (Right to a Republican Form of Government)

James Madison wrote in the Federalist, at 10.22:

> ...democracies have ever been spectacles of turbulence and contention; have... been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.

Our government is not a democracy. It was never intended to be a democracy. Our Constitution is not designed to protect the politically powerful, or the majority, or even the government itself; ours is a constitutional republic; which first protects the rights of individuals, and then the interest of the whole.

In general, democracies do not protect the rights of individuals - which enables the majority, or those in power to suppress those who are in the minority. Which is precisely what we have when we are made subject to Congress' so called Article IV jurisdiction; wherein the Constitution does not apply and property is not recognized; where there is no division of

power between the Federal and State governments; and where the right of local self government is all but eliminated.

A republican form of government, as it is intended under our Constitution, is defined by the Constitution itself. It calls for a division of power between the federal government and state governments. It allows for the right of local self government. It calls for protection of property, due process and just compensation as is defined by the Common Law. And it requires adherence to the Bill of Rights.

As can be seen by the case law thus far discussed, persons made subject to Congress' Article IV jurisdiction, (as it is now being applied) are not protected by the Constitution. There is no security; there are no guarantees. What Congress bestows, can be altered or retaken. The people acting through Congress are king. It is they who have the ultimate say - making that process a true democratic process.

What Westerners face today is little different from that which the colonist faced at the time of the American Revolution. Rights afforded the citizens of England under the Magna Carta, were not necessarily extended to the American Colonies. Nor were they free to exercise local self government.

Westerners made subject to Congress' so called Article IV jurisdiction are not afforded equal protection under the privileges and immunities clauses which are incorporated within the Fourteenth Amendment and Article IV Section 2 of the Constitution. They are not protected by the Guarantee Clause. Where citizens of New Jersey, or Pennsylvania or New York, participate in the election of a local sheriff who enforces nearly every law as it relates to the local community, in Nevada we have practically no say as to who will enforce the federal laws which are applied to the majority of the area within our

Counties.

The same can be said of the selection of judges. Rather than being selected by the people who live within the district in which they serve, federal judges are selected by persons representing all of the several States.

Simply stated, citizens of the Public Land States are unequal to others in their right to the exercise of municipal government. As it is, persons living outside of the State of Nevada have nearly as much say as to what laws are applied within our counties as do Nevada citizens. But the same situation does not exist for the New Jersey citizens, for we in Nevada have nothing to say concerning the governance of local affairs in that State.

As a result of the exercise of Congress' so called Article IV jurisdiction, within Nevada, we are suppressed economically - for the people living in New York or new Jersey, don't care about the economic well-being of the citizens in Nevada; their interest in Nevada lies in its recreational and aesthetic potential. As far as they are concerned, they don't necessarily want to see mining, ranching or certain other activities occurring on "their public lands".

This places citizens living within the Public Land States in the same situation to which the citizens of the colonies found themselves prior to the American Revolution. In the Colonist's time it was the people of England that controlled the affairs of the Colonies - whereas in Nevada, it is the people of the several States that control the affairs of our local communities.

Our question is, can anyone produce evidence which shows that we, in the Public Land States, are not being denied our right to be protected by the Guarantee Clause (Article IV, Section 4), and equal protection under the privileges and immunities clauses

of the Fourteenth Amendment and Article IV, Section 2, of the Constitution, when we are made subject to Congress' Article IV authority, as it is now being applied?

And too, can anyone produce evidence which shows that it was the intent of the Founders of this Nation to create a Democracy rather than a Constitutional Republic; which protects the rights of individuals against the abuses of majority rule?

QUESTION 15 (Private Rights and the Dred Scott Decision)

In *Dred Scott v. Sandford*, 60 U.S. 393, the Court Said:

> This brings us to examine by what provision of the Constitution the present Federal Government, under its delegated and restricted powers, is authorized to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States, while it remains a Territory, and until it shall be admitted as one of the States of the Union.
>
> There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; And if a new State is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no

power is given to acquire a Territory to be held and governed permanently in that character.

And indeed the power exercised by Congress to acquire territory and establish a Government there, according to its own unlimited discretion, was viewed with great jealousy by the [60 U.S. 393, 445] leading statesmen of the day. And in the Federalist, (No. 39,) written by Mr. Madison, he speaks of the acquisition of the Northwestern Territory by the confederated States, by the cession from Virginia, and the establishment of a Government there, as an exercise of power not warranted by the Articles of Confederation, and dangerous to the liberties of the people. And he urges the adoption of the Constitution as a security and safeguard against such an exercise of power.

We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion. It is a question for the political department of the Government, and not the judicial; and whatever the political department of the Government shall

recognize as within the limits of the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States, so far as they apply, and to maintain in the Territory the authority and rights of the Government, and also the personal rights and rights of property of individual citizens, as secured by the Constitution. All we mean to say on this point is, that, as there is no express regulation in the Constitution defining the power which the General Government may exercise over the person or property of a citizen in a Territory thus acquired, the court must necessarily look to the provisions and principles of the Constitution, and its distribution of powers, for the rules and principles by which its decision must be governed.

Taking this rule to guide us, it may be safely assumed that citizens of the United States, cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The principle upon which our Governments rest, and upon which alone they continue to exist, is the union of States, sovereign and independent within their own limits in [60 U.S. 393, 448] their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the General Government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form.

At 60 U.S. 393, 449, the Court further states:

... the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizens are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizens strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government [60 U.S. 393, 450] can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved. (Emphasis added)

A reference to a few of the provisions of the Constitution will illustrate this proposition. For Example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for

the redress of grievances. Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

These powers, and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property have been guarded with equal care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of live, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.

So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a Territory without the consent of the owner, in time of peace; nor in time of war, but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a Territory who was convicted; nor take private property for public use without just compensation.

The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate,

> including those portions of it remaining under Territorial Government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are [60 U.S. 393,451] concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal Government –it will be admitted, we presume, that it could not authorize a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution. (Emphasis added)

There has been great change in the interpretation of the Constitution and the intent of the Founders, with regard to personal rights since the Constitution was adopted in 1787. However, we do not believe there is any question as to which of the various interpretations are correct. No one can study the history of this nation and come away believing that Chief Justice Taney is incorrect. Clearly, by the Declaration of Independence, the Constitution and by the various treaties that have been adopted, persons living within the Territories of the United States, and persons living within admitted States, cannot by stripped of their God given and constitutionally protected rights, no matter where they might be standing when a question arises, whether it be on public lands or private lands.

Our question is, can anyone find where the Court, at a later date, has specifically addressed Chief Justice Taney's findings (above stated) and found them unconstitutional? If not, then we must assume that under the Constitution, no person, living either within a Territory of the United States, or within an

admitted State, can, by being made subject to Congress' Article IV authority, be deprived of their constitutionally protected rights.

QUESTION 14 (Gradual Usurpation)

In *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304 (1795) the Court, when speaking of the Constitution of Pennsylvania and the taking of property, said at 2 U.S. 304, 309:

> The Constitution of a state is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events: notwithstanding the competition of opposing interests, and the violence of contending parties, it remains firm and immoveable, as a mountain amidst the strife of storms, or a rock in the ocean amidst the raging of the waves.

And at 2 U.S. 304, 312:

> The Constitution expressly declares, that the right of acquiring, possessing, and protecting property in natural, inherent, and unalienable. It is a right not *ex gratia* from the legislature, but *ex debito* from the constitution. ...Innovation is dangerous. One encroachment leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical principles are generally broken in upon, and the constitution [2 U.S. 304, 312] eventually destroyed.

There is great tendency for interpretations of law to evolve. As is above indicated, one encroachment leads to another, new presidents gives way to other new presidents, until many years later great contradictions are evident. Such has never been

more the case than in the interpretations of Article I, Sec. 8, Cl. 17. First, it was understood that the power was for creation of military establishments only. Later it was accepted that lands could be acquired for all of the Federal Government's enumerated authorities. Then it became accepted that lands could be acquired for almost any purpose, including recreation and aesthetics .

The same has occurred with regards to jurisdiction. At first, the language which states, "To exercise exclusive Legislation in all cases whatsoever...", was taken to mean that the Fed's authority was to be exclusive of all others. However, it was not long until the Court was ruling that there could be a mix of power exercised within enclaves; whereby the State could exercise some powers while the Federal Government could exercise others. Soon it became accepted that the Federal Government could purchase lands within an admitted State without the State's consent so long as it did not exercise jurisdiction over the land it had acquired. Now, it is accepted that the Federal Government can buy any amount of land it wants within an admitted State, any time it wants without the State's consent, and then go about exercising whatever jurisdiction it wants on the lands purchased without the State's consent.

Much the same scenario has occurred with regards to the power that is derived from Art. IV. Sec. 3, Cl. 2. Even though the Court made it clear in the Dred Scott case, that such authority could not be extended to later acquired territory, the ruling was eventually ignored and it became accepted that the Federal Government's authority over all territory and possessions belonging to the United States, was by the authority of the Property Clause. Some time later, it became accepted that the Federal Government could retain the unappropriated lands within a States after the State was admitted to the Union.

And form there, it was easy to assume that the authority for such retention, and of course management, was by the Property Clause, which by the Court's own definition (as was established when it was applied to territories and possessions) is plenary and without limitation.

The Federal Government can now do just about anything it wants within an admitted State; with its political influence being what it is, and its great wealth, there is bound to be greater land acquisition, even more corruption, and ever more encroachment upon the rights of individuals. So there we have it; precisely what the Founders warned us against - with Thomas Jefferson's prophecy standing four-square before us.

When speaking of the judiciary Mr. Jefferson said; "working like gravity by night and by day, gaining a little to-day and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. ...when all government... in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated." (1821).

In summary, persons living within the State of Nevada, who are made subject to Congress' Article IV jurisdiction, as it is now administered, are deprived of the following rights.

1. The right of the Defendant to have the Constitution interpreted and enforced in accordance to the Founder's original intent, wherein the language incorporated within Article I, Section 8, Clause 17, was intended to prevent the Federal Government from acquiring such power, as Mr. Gerry said during the Constitutional Convention, that it

"Might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the general government".

2. The right to be tried by a court which acts as a constitutional court rather than a legislative court (wherein the court acts in full obedience to the Constitution).

3. The right to be treated as a citizen of an admitted State of the Union rather than a citizen of a Territory (wherein, the rights of persons, both political and personal, are protected).

4. The right to be governed and protected by State and Common Law (which includes; the right to due process as it is defined by the common law, the right to be treated as innocent until proven guilty, as is defined by the common law, the right to be secure in our persons and effects, against unreasonable searches and seizures, as is defined by the common law, the right, that no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized, as is defined by the common law, and the right, that property be defined by State and Common Law rather than by an authority which has been declared to be extra- constitutional, plenary and without limitation).

5. The right to be protected by the 6th Amendment to the Constitution, to be informed of the nature of the charges (so as to provide the Defendant with knowledge of the rules by which the court is to follow in a proceeding).

6. The right to have municipal government exercised at the local level rather than by the Nation as a whole (as is provided for

under the Constitution of the United States, and the Constitution of the State of Nevada).

7. The right of the Defendant to be judged by his peers at the local level, rather than at the Federal District level, and by persons far removed from the realities and experience necessary for rendering just decisions, when persons are charged with crimes allegedly committed on the public lands which lay within a given community.

8. The right of the Defendant to be protected by the 10th Amendment to the Constitution, wherein the powers of the Federal Government are limited and enumerated.

9. The right of the Defendant to be protected by the Bill of Rights and the Constitution in their entirety, and not in some instances and not others.

10 The right of the Defendant to be protected by the Privileges and Immunities clauses of the Fourteenth Amendment and Article IV, Sec. 2, which guarantee Citizens of each State be entitled to all Privileges and Immunities of Citizens in the Several States.

11 The right of the Defendant to be protected by Article 1, Section 8, Clause 17, of the Constitution, which guarantees that no land be acquired within a State except by purchase, and by consent of the legislature.

12. The right of the Defendant to have his rights protected as unalienable God given rights, rather than as federally granted rights, which can be taken from him at any time by a later act of Congress.

13. The right of the Defendant to be protected by the Treaty

provisions of the Constitution which are incorporated within Article III, Sec. 2, and Article VI, Cl. 2, of the Constitution, and subsequently, Article IX of the Treaty of Guadalupe Hidalgo, which state that the Mexicans [or persons living therein] "shall be incorporated into the Union of the United States..., to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution".

14. The right of the Defendant to be protected by a division of power between the Federal and State governments, as is recognized in *New York v. United States*, 505 U.S. 144, 181 (1992), wherein the Court said, "The Constitution does not protect the sovereignty of states for the benefit of the states or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between the federal and state governments for the protection of individuals. State sovereignty is not just an end in itself, "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power". *Coleman v. Thompson*, 501 U.S. 772, 759 (1991). "Just as the separations and independence of the coordinated Branches of the Federal Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the State and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S., at 458 (1991). See The Federalist No. 51, p 323. (C. Rossiter ed. 1961)

15. The right of the Defendant to be heard by a court which shall address each argument raised, in detail, as has been acknowledged in *Marbury v. Madison*, 1 Cranch (5 U.S. 137 (1803), wherein the court said, "It is emphatically the province and duty of the judicial department to say what the

law is. Those who apply the rule to particular cases, must of necessity expound and interpret the rule. If two laws conflict with each other, the courts must decide on the operation of each."

Our question is; is there anyone who can produce evidence showing that it was the intent of the Founders of this Nation that persons living within an admitted State of the Union should be deprived of the rights above summarized when they are not made subject to Congress' authority which is granted it under Article I, Sec. 8, Cl. 17 of the Constitution?

(End)

March 2
1995

ELKO DAILY

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Study: 23 million acres lost to US management

WASHINGTON (AP) — Federal land claims in the contiguous 48 states increased by about 23 million acres over the past 30 years, an area the size of South Carolina, a government report said today.

Federal claims increased in all 48 states from 1964 to 1993 except Idaho, Utah and New Mexico, the General Accounting Office said. Most of the gains were due to expansions of national parks, national wildlife refuges and national forests.

Rep. Don Young, R-Alaska, chairman of the House Resources Committee and a key opponent of new federal land acquisitions, said he asked for the study last year because he "never really believed the government's assertion that federal land ownership was actually decreasing in the Lower 48 states."

"This report outlines alarming trends in the gradual growth of federal land ownership throughout the United States," Young said.

The report said that when Alaska and Hawaii are included, federal ownership nationwide declined from 701 million acres in 1964 to 623 million acres in 1993.

The nationwide totals were skewed by Alaska, where 96 million acres has moved out of federal management since 1964 due primarily to treaties with Native Alaskans and transfers related to the Alaska Statehood Act of 1958, the report said.

Nevada saw federal claims increase the most since 1964, an increase of about 3.7 million acres to a total of 56.8 million acres.

Other big increases were in Arizona, 2.9 million acres; California, 2.8 million acres; Florida, 1.1 million acres; and Wyoming, 1.1 million acres.

The GAO, the investigative arm of Congress, reviewed the lands held by the nation's four major land management agencies — the Forest Service, National Park Service, Bureau of Land Management and Fish and Wildlife Service.

The four agencies manage 95 percent of the federally managed land, with the Defense Department managing most of the rest. They now account for about 27 percent of the 2.3 billion acres that make up the United States, the GAO said.

"Since fiscal year 1993, the amount of land managed by the four agencies has continued to increase as a result of the expansion of existing or creation of new, national forests, wildlife refuges and parks," the GAO said.

The four agencies manage more than half the land in five states — Alaska, 66 percent; Idaho, 61 percent; Nevada, 81 percent; Oregon, 52 percent; and Utah, 62 percent, GAO said.

The state with the smallest percentage of acres managed by the federal government is Iowa, 1 percent.

In addition to Alaska, other states with significant reductions in federal claims were Idaho, down 295,000 acres, New Mexico, down 329,848 acres, and Utah, down 579,099 acres.

Federal claims increased 404,992 acres in Oregon — from 31.7 million in 1964 to 32.1 million in 1993. It increased 304,578 acres in Washington — from 11.3 million to 11.6 million.

The federal government managed 239.5 million acres in Alaska in 1993, compared with 335.7 million acres in 1964, the GAO said.

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BEST AVAILABLE COPY

Miller wants public land to stay in federal hands

Gov. Bob Miller says he opposes Nevada taking over control of 48 million acres of federal land.

A proposal being considered by Congress would transfer to states as much as 270 million acres now managed by the Bureau of Land Management. Nevada has the most BLM land of any state — 67 percent of its acreage.

Miller press secretary Richard Urey said Miller "has very profound concerns about the fiscal impacts — fires, prevention of erosion, reforestation, agronomics, public security and enforcements. The costs are enormous."

"The federal government has borne those costs," Urey added. "To shift those responsibilities to the state casts a shadow of mounting costs on state taxpayers."

Contrary to the governor's assessment, a study conducted by Eureka County indicated Nevada would net $150 million a year if it were handed control of public lands.

Urey's comments coincided with release of a BLM report showing the federal agency made direct payments of $15.2 million to Nevada last fiscal year and invested another $58.4 million in services to the state.

A breakdown of the $58.4 million in services include fire-fighting, mineral leases and upkeep of recreational facilities.

BLM chief Mike Dombeck said the combined $73.6 million in direct transfers and services compares with $39.1 million in revenues from BLM-managed lands in Nevada in 1994. The revenues include fees for recreation, mining, livestock grazing and timber sales.

"The BLM's report makes clear why Nevada comes out a winner when the public lands are held in trust and managed by the BLM," Dombeck said. "The reason is simple: Federal taxpayers across the nation — not just the citizens of Nevada — pay for the BLM's stewardship of the public lands within Nevada's borders."

Dombeck also said the pending congressional proposals to transfer public lands to individual states doesn't restrict the state's management, and states could keep or sell off the lands.

He added the legislation doesn't compensate taxpayers for the loss of revenue from the commercial activity on public lands, the loss of assets on the land or the land itself.

The Eureka County study, conducted by Resource Concepts Inc. of Carson City, said that while the federal government loses money on land management, states that do so make money. Arizona had a profit of $45.5 million on the management of nine million acres there in 1993. Idaho saw a profit of $25.7 million on the 2.4 million acres it manages. New Mexico saw a 1993 profit of $134.7 million on the management of 13.2 million acres of public land; and Utah, which manages 3.7 million acres, turned a profit of $18.7 million that year.

RCI said that while the BLM managed to lose $28.5 million during 1992 on public land in Nevada, proper management of that land would yield a profit for the state of from $100 million to $200 million. — By Associated Press and *Free Press* staff.

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

United States of America,
Plaintiff,
-vs-
Clifton P. Gardner,
Defendant.
_____/

NO. CR-N-01-141-HDM (VPC)
United States District Court
400 S. Virginia Street
Reno, Nevada 89501
November 20, 2001

TRANSCRIPT OF COURT TRIAL
BEFORE THE HONORABLE HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: Brian L. Sullivan
Assist. United States Attorney

FOR THE DEFENDANT: Clifton P. Gardner
In Pro Per

Proceedings recorded by mechanical stenography produced by computer-aided transcript

OFFICIAL COURT REPORTER:

KATHRYN M. FRENCH, RPR
NEVADA LICENSE NO. 392
CALIFORNIA LICENSE NO. 8536

* * *

[5] record the Court has referred to the defendant as representing himself in pro se. I would like to stress your

court that I am appearing – I am not appearing in pro se; rather, I'm appearing in pro per.

THE COURT: You're representing yourself –

MR. GARDNER: That's right and I'm challenging –

THE COURT: The record –

MR. GARDNER: I'm challenging the jurisdiction.

THE COURT: When I'm talking, you don't talk when I talk; do you understand that?

MR. GARDNER: I do now.

THE COURT: Miss Clerk, will you have a marshal called and he can sit in the front row.

MR. GARDNER: Your Honor, I am here under special and limited appearance only.

THE COURT: The record will so reflect. You've already reflected that before. That's redundant.

MR. GARDNER: Under the Constitution of the United States, it is unlawful for the United States Forest Service to operate within the boundaries of an admitted State of the Union.

THE COURT: If that's a motion to dismiss, it is denied.

Do you have any additional points?

MR. GARDNER: Yes, Your Honor.

[6] THE COURT: Please make them.

MR. GARDNER: I have not been advised of my rights, and the way this court is proceeding –

THE COURT: All right. The record will reflect –

MR. GARDNER: – and I do not know the rules by which this court is proceeding.

THE COURT: All right.

MR. GARDNER: I have not been advised of the rules, Your Honor.

THE COURT: On the first point, the record reflects you've been fully advised many times of your rights. On the second point, if that's a motion to dismiss, it's denied.

All right. Do you have anything else?

MR. GARDNER: I do not understand the rules, Your Honor.

THE COURT: All right. I've –

MR. GARDNER: I do not know whether this court is going to be proceeding in obedience to the Constitution, Your Honor.

THE COURT: All right.

MR. GARDNER: I've never been advised in past proceedings, this proceedings, or any proceedings, as to how this court is moving. I do not know if this court is acting in obedience to the Constitution. I do not know if this court is acting as a constitutional court or as a legislative court, [7] Your Honor. I cannot appear before a court that refuses to act in obedience to the Constitution, Your Honor.

THE COURT: Is that all you have?

MR. GARDNER: That is all I have.

THE COURT: All right. The motion to dismiss is denied.

Mr. Sullivan, you may –

MR. GARDNER: I'm sorry. I cannot appear here.

THE COURT: Mr. Sullivan, you'll make your opening statement.

I would advise you of this, if you do leave the courtroom, you'll be tried in absentia.

MR. GARDNER: Do what you have to do, but I will not appear before a court that acts in disobedience to the Constitution of the United States.

THE COURT: That's fine. I just want to advise you that if you leave the courtroom, you'll be tried in your absence, and I'll issue a warrant for your arrest for failing to appear.

Do you understand that?

MR. GARDNER: I understand that.

THE COURT: All right.

[Cliff leaves court room]

MR. SULLIVAN: May I proceed, Your Honor?

THE COURT: You may.

And I would advise you that it is foolish for you to

* * *

[21] [After Cliff is brought back before the Court]

wife has expressed her opinion about ownership of the cattle. That's an issue that you may or may not raise as a defense in this case. I haven't heard this case yet. And the reason we didn't start the case was because you left.

Now, if you give me your assurances that you're going to remain during the balance of this trial, then I'm going to continue the own recognizance release. If you don't give me that assurance, then I'm going to have you post a cash bail that will be forfeited the second you leave the courtroom again. And that bail would be in the amount of $5,000.

Now, you have to make the choice on what you want to do on that.

MR. GARDNER: Well, Your Honor, will there – if I have the opportunity to present jurisdictional arguments, will I have an opportunity to also understand the rules by which this court shall be proceeding?

THE COURT: You'll have the opportunity to hear the rulings of the Court.

MR. GARDNER: I'm referring to the rules under my Sixth Amendment rights, Your Honor. I have the right to understand the rules by which the Court is proceeding.

THE COURT: I'm going to give you –

MR. GARDNER: Will I have an opportunity to understand the rules?

[22] THE COURT: I don't know whether you'll understand them, but I will explain them to you as I have in the past, and we'll proceed from there.

MR. GARDNER: If you will answer my questions, I would be glad to stay and have opportunity.

THE COURT: All right. Then we'll proceed with the arraignment, and I'm going to direct that – do you have anything else to say with respect to the amount of bail that should be posted in this case?

MR. GARDNER: I do not.

THE COURT: All right.

Miss Clerk, you will direct that the amount of bail in this case will be set in the amount of $5,000. The matter will be continued until what date for trial?

THE CLERK: December 6th.

MR. GARDNER: I'm prepared to present my information today as regards to arraignment and challenge of jurisdiction, Your Honor.

THE COURT: Well, I'm not going to proceed on this case until you've posted the $5,000, either a bail bond or cash.

MR. GARDNER: And then you will proceed?

THE COURT: If you post the $5,000 cash today, I'll proceed.

MR. GARDNER: If my wife writes a check to you for [23] $5,000, will you accept that and proceed today?

THE COURT: Well, only if it's a certified check or cash from the bank.

MR. GARDNER: You're making it very difficult for us.

THE COURT: Well –

MR. GARDNER: Our credit is some of the best in the State.

THE COURT: This wouldn't have happened if you hadn't walked out of the courtroom a few minutes ago.

MR. GARDNER: And I would not be afforded my Constitutional rights if I had not walked out of this courtroom.

THE COURT: How soon can you post the cash?

MR. GARDNER: Well, if Bertha can get to a bank where she could cash a check, she could bring you cash.

THE COURT: All right. We'll wait. And the other option is you can remain for the trial. If you remain for the trial and give me your assurances you can remain through this trial, then you don't have to post it. It's up to you.

MR. GARDNER: I could give you that assurance if I understood that arraignment –

THE COURT: Well, I'm not going to negotiate with you on that. I'm going to give you the opportunity to make your argument and then I will make my ruling.

[24] MR. GARDNER: My arguments in regards to jurisdiction and rights afforded, is that correct?

THE COURT: Right. you've already raised those issues. I'll hear them again, as I indicated.

MR. GARDNER: Okay.

THE COURT: You said it would take 15 minutes.

MR. GARDNER: All right. So –

THE COURT: So, you may go ahead.

MR. GARDNER: But you would like Bertha to leave these chambers now, secure –

THE COURT: Here are your choices: Either you post the $5,000 cash, or if you walk out of this courtroom again, you'll be arrested and you'll be held in custody until I can try this case. And that will be on the 6th of December.

Now, those are your choices. My recommendation is that you comply with the lawful orders of this court, but I can't force you to do that, other than to have you arrested. I don't have any desire to have you arrested.

MR. GARDNER: I think I understand that, Your Honor.

What I do not understand is what's going to happen immediately. Am I understanding correctly that Bertha is going to have an opportunity –

MRS. GARDNER: You can go to the trial right now and I don't have to post the bail.

MR. GARDNER: That's what I was unclear of, Your [25] Honor. If you want to proceed right now and

then Bertha could secure money later on, I am ready, Your Honor.

THE COURT: If you'll stay in the courtroom and we can proceed with the trial, I'm not going to require you to post the cash.

MR. GARDNER: Okay. Thank you.

THE COURT: All right. Now, we're back to the point we were before. And that is, are you ready to proceed?

Mr. Sullivan?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Gardner?

MR. GARDNER: Yes.

THE COURT: All right.

Did you wish to make an opening statement?

MR. SULLIVAN: On behalf of the government?

THE COURT: Yes.

MR. SULLIVAN: I made one. Do you want me to –

THE COURT: Yes, I'd like to have you make it in the presence of Mr. Gardner.

MR. SULLIVAN: All right.

Your Honor, if it please the Court, the evidence in this case will show that on June 17th of this year, 2001, Mr. Gardner sent a letter to the United States Probation

Office, Rick Oehlerking, indicating that he had been putting out his livestock on lands claimed to be owned by the United

* * *

[29] further south to the Hankins Creek area. He went up through that area, through the C & H Allotment, and onto an adjacent allotment, the Corta, sheep and goat allotment, and found a number of cattle, 39 of which had the slash J brand on Forest Service lands.

The next day, the 23rd of August, Dave Griffel and Bob Field attempted to serve a violation notice, a ticket, basically, on Mr. Gardner. They were invited into the house. There was some concern over the fact that they had firearms. Mr. Gardner did not want – Mr. and Mrs. Gardner did not want to continue the conversations inside the house, so they went outside and continued their conversation.

During that time, Mr. Gardner stated the cattle had been out there all summer. He had not made any effort to remove them. That they would just come down [on] their own. And they attempted to give him the ticket, which he refused to take. He went back in the house. And the agent placed the violation notice under the windshield wiper blade of one of his vehicles and then called him on the cell phone to tell him that he had left the ticket there and that he was served with this ticket.

[Gardner presents statement]

Thank you, Your Honor.

THE COURT: All right. Thank you.

Mr. Gardner, you may make your opening statement and you may include any issues on jurisdiction that you wish [30] to.

MR. GARDNER: Thank you, Your Honor.

Being an amateur at this, Your Honor, of course, trying to do – just before the Court I could make some mistakes, so in view of that, I had statements that I want to present, if it's proper, to the Court. I have copies of those. Is that –

THE COURT: Well, you may make your oral statements, so I can hear them then. And then if you want to file something, you may.

MR. GARDNER: I will file this in addition.

THE COURT: All right.

MR. GARDNER: Your Honor, I am here under special and limited appearance today. Under the Constitution of the United States, it is unlawful for the United States Forest Service to operate within the boundaries of an admitted State of the Union. These people that are here today who represent themselves to be officers of the United States Forest Service, are here under color of law only.

The last time I was before this court, Your Honor, this court acted as an Article IV court. I was not afforded my constitutionally protected rights. As was established in [the] *Downs versus Bidwell* case, the *Benner v. Porter* case, and the *Benner v. Porter* case, a court which acts as an Article IV court cannot operate within the boundaries of an admitted [31] State of the Union; nor can jurisdiction,

which is derived from the Property Clause, be exercised within the limits of an admitted State.

At the very outside, Your Honor, it may be assumed that an Article III court can take cognizance over an Article IV matter. But even then, only if a defendant does not waive his Constitutionally protected rights. In this case, Your Honor, I do not waive any of my rights which are guaranteed by the United States Constitution.

In addition, Your Honor, and before proceeding further, there were questions that were raised before the magistrate court which were not resolved. I do not believe that the initial appearance and arraignment process was properly completed, Your Honor.

First of all, the nature of the case had not been made clear. I do not understand how to prepare a proper defense. I have no idea what the rules are which govern this court, Your Honor. As I understand it, when a court acts as a Constitutional court, it acts in full obedience to the Constitution of the United States, and the Constitution itself provides the primary rules which a court must follow. Whereas, in a legislative proceeding, it does not require that the court act in full obedience to the Constitution.

I believe, Your Honor, that as a citizen of [an] admitted State of the Union, I do have a right to understand the rules [32] by which this court will proceed and to be thus informed.

In this context, Your Honor, will you please tell me, will this court be acting as a Constitutional court rather than a legislative court during these proceedings, and will

the Constitution act as the primary rules during these proceedings, Your Honor?

THE COURT: All right. Have you concluded your argument on your statement?

MR. GARDNER: In that particular realm; yes.

THE COURT: I ask you to complete your argument and then I'll make my rulings.

MR. GARDNER: The second issue not resolved by the magistrate was the issue of summons. A proper and lawful summons was not issued in this case, Your Honor. Rule 4 of the Federal Rules of Criminal Procedure, under Rule 4 of the Federal Rules of Criminal Procedure, it is required that the magistrate judge sign the summons. The ticket that was issued me demanding my appearance was not signed by the magistrate, Your Honor. Consequently, I have not been lawfully placed under the jurisdiction of this court.

Do you concede that to be true, Your Honor?

THE COURT: You may conclude your arguments and I'll make my rulings.

MR. GARDNER: Third, Your Honor, the magistrate [did] inform me of my right to remain silent, my right to [33] obtain counsel and so forth. But when I asked specifically if I would be afforded all of my Constitutional rights during the proceeding, she would not answer.

So that I shall be placed in a position where I can prepare a proper and adequate defense, Your Honor, will

you please tell me if I will be afforded all of my Constitutional rights and guarantees afforded me by the Constitution in these proceedings or will you not?

That concludes my presentation or testimony at this time, Your Honor. I would just say that, in summary, to this time before you and these proceedings and before district court in former proceedings, jurisdiction was not and has not been established; proper summons in this particular instance has not been issued; and I do challenge for want of jurisdiction; and I am appearing under special appearance for want of jurisdiction, Your Honor.

THE COURT: All right. Thank you. The record will so reflect.

Did you conclude your statement?

MR. GARDNER: I just want to say that under the *Madison – Marbury v. Madison* case, Your Honor, it's stated very clearly by the Supreme Court of the United States that when arguments are presented in a Constitutional proceeding, that it is required that the court expound on those arguments.

During the appearance before the magistrate court, [34] I presented an issue or a summary of rights that I am denied when appearing before a legislative court. I asked her to address those when she was going through the process of advising me of my rights. I asked her if she would address those also, and she informed me that those would be – those arguments and the ones that I have now presented would be answered by the district court. I assume that the district court is the court that I am before today, and pursuant to that decision in *Marbury v. Madison*, I ask that you expound on each of those listed rights

as though they are individual arguments presented before and during your ruling, Your Honor.

THE COURT: All right. Thank you.

MR. GARDNER: As part of your ruling.

THE COURT: Thank you.

MR. GARDNER: Thank you.

THE COURT: You may be seated.

Some jurisdictional arguments were raised, Mr. Sullivan. Do you wish to respond to those – well, let me finally ask.

Is there anything on the merits of the case itself that you wish to advise the Court of in your opening statement?

MR. GARDNER: I do not.

THE COURT: All right. Thank you.

MR. SULLIVAN: My only response to the [35] jurisdictional arguments, Your Honor, are as follows:

That these are pretty much the same arguments that Mr. Gardner made before when we had a trial about this time last year about whether the Court is going to afford him all of his Constitutional rights. He actually filed a motion, kind of, in that regard all on the same issue. I did respond to it at that time, basically saying that's what the courts are for. That's exactly why you're here, as a neutral and impartial arbiter at the trial, to make sure that his rights are followed, and that he is advised of his rights.

So, in that regard, I don't think that – you could take out the Constitution or The Bill of Rights and just start

reading them to him, but I don't think that that's what's required. I think to the extent that you've been required to do so, at the initial appearance in front of the magistrate, he refused to plea. The Court entered a not guilty plea on his behalf to protect his rights, and advised him that he didn't have to make any statements. The normal things that magistrates do.

In that regard, Your Honor, I would state that he is being afforded all of his Constitutional rights and has been afforded all of his Constitutional rights. This is not an Article IV legislative court. It's an Article III court. And the Court exercises proper jurisdiction under article III.

Furthermore, his arguments on jurisdiction as to [36] the United States Forest Service have all been addressed and foreclosed by the case that he was personally involved in; *United States versus Gardner*, 102 F.3d 1314, the 1997 Ninth Circuit case, where the Ninth Circuit made it clear that the United States Forest Service has jurisdiction over national forests, and specifically has jurisdiction over the national forests, the Humboldt-Toiyabe National Forest, the forest upon which the trespassing livestock are at issue here in this very case.

So, for those reasons, we suggest that to the extent that he's making motions to dismiss this particular case for want of jurisdiction, they should all be denied.

THE COURT: All right. Thank you.

On the jurisdictional issues that you've raised, Mr. Gardner, the Court makes the following findings:

First, Title 16 of the United States Code Section 551, charges the Secretary of Agriculture with the protection of public forests. Article III Section 2 of the United States

Constitution permits this court to proceed on the criminal information which has been filed. The pertinent part of Section 2 of Article III provides that, "The judicial powers shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treatise made."

This portion of Article III Section 2 makes [37] clear that the judicial power is not limited to only certain sections of the [C]onstitution, but it extends to the Constitution in its entirety, and it extends to all of the laws of the United States and treatise.

This issue that is before the Court under the terms of the information that has been filed, arises under the laws of the United States and is a matter properly committed to an Article III court.

With respect to the argument about the government's jurisdiction over National Forest Lands, the case of *United States versus Gardner*, of which you're familiar, is controlling. That's set forth at 107 F.3d 1314, Ninth Circuit decision, 1997. There, the Court said, among other things:

"There can be no reasonable doubt that the national forests reserved for the public domain, are the property of the United States and rightfully managed by the Forest Service pursuant to federal law."

The United States, thus, has title and the right to administer the Humbolt National Forest. And pursuant to that authority, regulations have been adopted, and the matter that is before this Court is a matter that is properly before the Court under the laws of the United States, and under Article III Section 2 of the United States Constitution.

For those reasons, the motion to dismiss on jurisdictional grounds is denied. It is so ordered.

* * *

APPENDIX F

Constitutional Authorities Set Out Verbatim

Article I, Section 8, Clause 17, of the Constitution; "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;..."

Article III, Section 2; "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;..."

Article IV, Section 2, of the Constitution; "The citizens of each State shall be entitled to all Privileges and Immunities of citizens of the several States."

Article IV, Section 3, Clause 2, of the Constitution, (The Property Clause); "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing shall be so construed as to prejudice any claims of the United States, or of any particular State."

Article IV, Section 4 of the Constitution; (The Guarantee Clause) "The United States shall guarantee to every State in this Union a Republican Form of Government,..."

Article VI, Clause 2, of the Constitution; (The Supremacy Clause) "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made,

under the authority of the United States, shall be the supreme law of the land;..."

Amendment VI, to the Constitution;" In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendment X, to the Constitution; "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article IX of the Treaty of Guadalupe Hidalgo, "The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States; and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

FILED
JUL 15 2003

(2)

No. 02-1814

In The

Supreme Court of the United States

CLIFTON P. GARDNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE OF PARAGON FOUNDATION IN SUPPORT OF PETITIONER

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26 pp

MOTION FOR LEAVE TO FILE BRIEF IN AMICUS CURIAE

Amicus Curiae, Paragon Foundation, hereby moves for permission to file its brief on grounds that it is deeply concerned with the issues of State jurisdiction, sovereignty and eminent domain, and believes these issues may not receive complete treatment in the briefs filed by the parties. Paragon submits that the following brief will contribute to the Court's understanding of the issues presented.

Counsel requested consent from the Solicitor General's office by telephone, but was directed to make such request in writing, which he has done. Nevertheless, as of the time of submission of the brief for printing, response to the request had not been received.

Respectfully submitted,

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INTEREST OF THE AMICUS CURIAE

The Paragon Foundation provides for the education, research and the exchange of ideas in an effort to promote and support Constitutional principles, individual freedoms, private property rights and the continuation of rural customs and culture. The Foundation and its members promote the renewal of the vision of the Founding Fathers for America.

In the past, whenever questions regarding the Federal Government's claim of jurisdiction over the public lands which lay within the Western States have arisen, questions regarding of the loss of constitutionally protected rights and the inability of admitted States to exercise municipal sovereignty, municipal jurisdiction and eminent domain within the full extent of their boarders because of the unconstitutional exercise of Article IV jurisdiction over federally claimed lands were not raised.

Amicus Curiae, share the concerns of Cliff Gardner, and respectfully request the Petition for Writ of Certiorari be granted and that the above stated concerns regarding, municipal sovereignty, jurisdiction, eminent domain and the loss of individual rights, be specifically addressed.

Counsel requested consent from the Solicitor General's office by telephone, but was directed to make such request in writing, which he has done. Nevertheless, a response to that request had not been received at the time for submitting the brief for printing. Counsel for a party did not author this brief in whole or in part. No other person or entity, other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

I

THE RIGHT OF ADMITTED STATES TO EXERCISE MUNICIPAL SOVEREIGNTY, JURISDICTION AND EMINENT DOMAIN OVER THE PUBLIC LANDS WHICH LAY WITHIN THEIR BORDERS.

The confusion which now exists, as to whether the Federal Government can lawfully exercise municipal sovereignty, jurisdiction and eminent domain over the public lands which lay within a State's boarders was not evident during the early history of our nation. As an example, in *Aldermen v. Eslava,* the Court said:

> **That the original states acquired by the revolution the entire rights of soil, and of sovereignty, is most certain. And if it be true, that Alabama was admitted on an equal footing in regards to the rights of soil with the original states, she can hold the high lands equally with the land covered by navigable water; and so can nine other states equally hold, to the utter destruction of all claim to the lands heretofore indisputably recognized as belonging to the United States, as being a common fund of the Union. — *Mayor and Aldermen of the City of Mobile v. Eslava*, 41 U.S. 234 (1842) *Emphasis added.***

> **We think a proper examination of this subject will show, that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama, or any of the new states were formed except for the temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia**

> **legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty with the French republic, of the 30th of April, 1803, ceding Louisiana. ... Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine is to deny that Alabama has been admitted into the union on an equal footing with the original states, the constitution, laws and compacts, to the contrary notwithstanding. --- *Pollard's Lessee v. Hagan,*44US 212(1845) *Emphasis added.***

The language that is incorporated in the above two paragraphs is extremely important to this case.

First the Court is speaking of the "right of soil" or "rights of soil" in a manner which indicates that it was believed at that time that the right of an admitted State to own and control the lands that lay within its boarder was an intricate part of, or one and the same as, the right to exercise municipal sovereignty and jurisdiction.

In the North Carolina constitution and in the Georgia constitution there are recitals to the effect that the "property of soil in a free government" is "one of the essential rights of the collective body of the people,". And that by statute in Georgia, all land in Georgia is allodial, that is, held of the State. The duties known as quit rents, take the form of taxes assessed on land and are merged in the larger sovereign power of general taxation. Accordingly, the paramount title and eminent domain of a state means the absolute ownership of all lands within its boundaries

and is an intrinsic and fundamental attribute of sovereignty. No state can be said to be sovereign that does not have this basic and essential element of sovereignty. Accordingly, when the State of Nevada was admitted to the United States on an equal footing with the original states in all respects whatever, this meant with full sovereignty and included the paramount title and eminent domain of all lands within its boundaries.

Second, the Court makes it clear that, it is, pursuant to the equal footing doctrine, that the right to exercise municipal sovereignty, the right to exercise municipal jurisdiction, and the right of soil, are to pass to all newly created States, upon their admission to the Union.

And third, the Court makes it clear, it matters not, whether lands or territory are acquired by the federal government by treaty (which in this case, was by the Treaty for the Purchase of the Louisiana Territory) or by cession (from one of the original states) such lands or territory, as well as municipal sovereignty and jurisdiction, are to be held only temporarily and in trust for future States.

In this regard, it is significant to note, that various States have been formed from lands which have been acquired in various ways. There are three States that have been formed from lands taken partially from the Northwest Territory and partially from later acquired territory. These States are Minnesota, Mississippi, and Alabama. In the case of Alabama the largest portion of the State was made up of lands taken from the Northwest Territory with a smaller portion taken from those lands which were acquired by the Louisiana Purchase. The *Pollard v. Hagan* dispute involved lands which are located within the City of Mobile; which lands were acquired via the Louisiana Purchase.

Thus it can be seen that the Court in the *Pollard* case, was not speaking of those States which were created out of the Northwest Territory alone, when it said that all States were entitled to exercise municipal sovereignty, jurisdiction and rights of soil over all the territory within its boarders. It was speaking of States which were to be created out of later acquired territory as well.

This is not just chance language or mere dicta we are herein and above quoting, for such concepts are not only reinforced and upheld elsewhere within the *Pollard v. Hagan* decision, but they are upheld in *Scott v. Sandford* 60 U.S. 393 (U.S. Mo. 1856), *American Insurance v. Canter* 26 U.S. 511 (1828), *Benner v. Porter* 50 U.S. 235 (1850), *Downes v. Bidwell*, 182 U.S. 244 (1901), and *Shively v. Bowlby*, 15 U.S. 1 (1894).

> **Whenever the United States shall have fully executed these trust, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states will be upon an equal footing, in all respects whatever ... and as soon as these purposes could be accomplished, the power of the United States over these lands, as property, was to cease. — *Pollard v. Hagan,* 44 U.S. (3 How.) At 222. *Emphasis added.***
>
> **Alabama is, therefore, entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine, is to deny that Alabama has been admitted into the union on an equal footing with**

> **the original states, the constitution, laws, and compact, to the contrary notwithstanding. --- *Pollard v. Hagan*, 44 U.S. (3 How.) At 228 -229. *Emphasis added.***

Thus, the Court could not have made it more clear; by the Constitution, by the Equal Footing Doctrine, and by the right of municipal sovereignty, unappropriated lands and municipal sovereignty must pass to newly created States upon their admission to the Union, (unless of course, a compact exists which requires that said unappropriated lands are to be sold by the Federal Government for the purpose of paying off a war debt, which in the case of the western public lands, no such compact exists).

Later decisions which indicate otherwise cannot stand, for when these findings and the findings of a later date are weighed against the Constitution itself, and the true intent of the Founders with regard to the intended protection of personal rights is considered, there is no question as to which findings are correct. Persons cannot be deprived of their constitutionally protected rights, simply because it is assumed that Article IV jurisdiction can be exercised within an admitted State.

The bottom line is; it is not that every State should poses the right to exercise municipal sovereignty, jurisdiction, eminent domain, or rights of soil within the full extent of their territory, that is important; but that every State should poses the right to exercise municipal sovereignty, jurisdiction, eminent domain, and right of soil over the full extent of their territory, so as to protect the freedoms and liberty of its people that is important.

II

KLEPPE V. NEW MEXICO AND THE PUBLIC LANDS

In many of the more recent rulings, the courts have held that Congress' power under the property clause to administer its own property claimed by the United States is virtually unlimited. *Kleppe v. New Mexico,* 426 U.S. at 539.

This expression may be accurate when applied to territory outside the boundaries of a State, but its application to 87% or more of the area of an admitted State has the effect of holding that land in territorial status.

The *Kleppe* opinion has been severely criticized in the scholarly writings of Professor David E. Engdahl. In his treatise *Constitutional Federalism In A Nutshell,* Second Edition, West Publishing Co. (1987) Professor Engdahl writes:

> **In 1976, with an opinion that displays disregard of what had been established for two centuries before, the Supreme Court unanimously (albeit unawares) revolutionized its doctrine under that clause. (Article IV, Sec. 3, Cl. 2) *Kleppe v. New Mexico,* 426 U.S. 529 (1976) Since this Court's opinion in *Kleppe*, that jurisdiction is claimed to rest on ownership of the public lands. No act of Congress conferring such jurisdiction on the Federal Courts is relied on. Jurisdiction is claimed under Article IV, Section 3, Clause 2. The briefing on behalf of New Mexico was inept; and for its part, the Court conspicuously failed to deal with many of the relevant cases and demonstrably misunderstood others. *Kleppe* held that "Congress**

exercises the powers both of a proprietor and of a legislature over the public domain." ...On this view, Congress can make rules for federal property which have no relation whatever to any matter of legitimate federal concern, and any such rule, being legislative in character, "necessarily overrides conflicting state laws under the Supremacy Clause." ...as to property located within the boundaries of states, that is a profoundly novel proposition which makes a mockery of the basic purpose of enumerated powers doctrine... What *Kleppe* really means is that over all the vast federal public domain within states, the United States has plenary, general governmental jurisdiction, and is not confined to those enumerated powers which it may exercise elsewhere in the country. It means that as to the east and the middle west, enumerated powers doctrine remains the foundation of constitutional power analysis, but as to the roughly half of the country from the Rocky Mountain states westward it has absolutely no significance at all.

Article IV of the Constitution does not provide authority to hold lands, only jurisdiction to govern lands belonging to the United States. It was directed by the founders solely to dealing with the Northwest Territory, lands that had been ceded to the federal government by the States prior to the adoption of the Constitution. The property clause was confined and was intended to be confined to the area of the States as settled by the treaty with Great Britain and have no influence on territory afterwards acquired from a foreign government. — *Scott v. Sandford*, 60 U.S. 393 (U.S. Mo. 1856) *Downes v. Bidwell*, 182 U.S. 244 (1901)

The United States acquired additional lands through treaty and conquest. Such lands were acquired and held pursuant to the treaty and war powers and as powers obtained by the United States as a nation as an incident of national sovereignty, not by any provision in the Constitution. *Cross v. Harrison*, 57 U.S. 164 (1853) Article IV provides legislative jurisdiction over such lands while they are in territorial status. *United States v. Gratiot*, 39 U.S. 526 (1840). Often, language from *Gratoit* is quoted in such manner as to give the impression that the Court, in that case, is sanctioning the exercise of Art. IV jurisdiction within admitted States. However, the language in the *Gratiot* case quoted in its entirety is as follows:

> **The term "territory" as here used, is merely descriptive of one kind of property, and is equivalent to the words "lands". And Congress has the same power over it as any other property belonging to the United States; and this power is vested in Congress without limitations, and has been considered the foundation upon which the territorial governments rest. --- Pg. 537**

Pursuant to such full governance power, Congress may establish an executive authority, a legislature, or courts of a nature of its own choosing. Indeed, a territorial act is itself a constitution. Clearly, such governance power must cease immediately upon the admission of a State to the Union. *American Insurance v. Canter*, 26 U.S. 511 (1828), *Benner v. Porter*, 50 U.S. 235 (1850), *Downes v. Bidwell*, 182 U.S. 244 (1901).

The Constitution deals with States, their people and their representatives. The principle object of the territorial clause was to transfer to the new government temporary

governance over the Northwest Territory. The Constitution does not extend to territories of its own force. Congress has power over territory it does not possess in the States. *Downes v. Bidwell*, pg 773

The judicial power of territorial courts, as well as the territorial government itself, was long ago determined to cease upon a State's admission to the Union. *Downes v. Bidwell*, 182 U.S. 244. In *Brenner v. Porter* at 235 the Court said:

> **We think it clear, therefore, that on the unconditional admission of Florida into the Union as a State, ...the Territorial government was displaced, abrogated, every part of it; and that no power of jurisdiction existed within her limits, except that derived from the State authority, and that by force and operation of the Federal Constitution and laws of Congress;... The admission of the State into the Union brought the Territory under the full and complete operation of the Federal Constitution, and the judicial power of the Union could be exercised only in conformity to the provisions of that instrument... The State authority was destructive of the Territorial; and, in connection with the establishment of the Federal jurisdiction, the organization of the government, State and Federal, under the Constitution of the Union, became complete throughout her limits. No place was left unoccupied for the Territorial organization. --- Pg. 242-3. *Emphasis added.***

The Federal Government's claim of retained ownership and the assertion of Article IV jurisdiction over such lands is clearly at odds with the above quoted holdings.

III

DOES THE EXERCISE OF ARTICLE IV JURISDICTION WITHIN AN ADMITTED STATE NOT VIOLATE THE GUARANTEE CLAUSE

The Guarantee Clause declares that, "[T]he United States shall guarantee to every State in this Union a Republican Form of Government." A republican government is one in which the people control their rulers. It is a government responsible to its voters rather than to any outside agency. John Locke, *Second Treatise of Government*, Sec. 149 (C.B. McPherson ed. 1980) (6th ed. London 1764). A republican government is "one ...(where) the Supreme Power resides in the body of the people." *Chisholm v. Georgia*, 2 U.S.(2 Dall.) 419 (1793). The language of the Guarantee Clause asserts a limit on the power of the federal government to infringe upon State autonomy. Exemption of unappropriated land from State autonomy, taxation and substitution of federal payments in lieu of taxes, makes State officers responsible, not to the people of the State, but, dependent on the federal government. Such disassociation of the power to spend and the power to tax destroys accountability and would "encourage few even casually acquainted with the writings of Montesquieu and the Federalist papers to assert that th[is] State enjoyed a Republican Form of Government." *Brown v. EPA*, 521 F.2d 827 (9th Cir. 1975). A republican form of government is one in which the people make important decisions affecting their community. *Heimbach v. Chu*, No. 83 Cov. 5318 (S.D.N.Y. Dec. 23, 1983) (LEXIS, Genfed library, Dist file), aff'd on other grounds, 744 F.2d 11 (2d Cir. 1984), cert. denied, 470 U.S. 1084 (1985).

The Guarantee Clause reserves for the States those matters that lie "at the heart of representative government." *Gregory v. Ashcroft*, 501 U.S. at 463. By limiting the efforts of Congress to control core local functions, "[t]he States thereby retain the ability to set their legislative agendas; State government officials remain accountable to the local electorate," *New York*, 112 S. Ct. at 2433. All States are guaranteed a republican form of government and, therefore, the Federal Government may not exercise local municipal powers in one State which it does not exercise in the others:

> **All states, after their admission into the Federal Union, stand upon equal footing and the constitutional duty of guaranteeing each state a republican form of government gives Congress no power in admitting a state to impose restriction which would operate to deprive that state of equality with other states. — *Butler v. Thompson*, 97 F. Supp. 17, 20-21 (E.D. Va.), aff'd 341 U.S. 937 (1951).**

The Federal Government's claim of ownership and jurisdiction over the unappropriated lands deprives the Gardners of the ability to hold elected officials responsible for decisions regarding essential local functions, including land use controls such as nuisance, overpopulation of feral horses, fire protection, economic development, providing infrastructure, and the host of municipal and other police power activities which lie at the nucleus of State and local government.

IV

DOES THE EXERCISE OF ARTICLE IV JURISDICTION WITHIN ADMITTED STATES NOT VIOLATE THE 10th AMENDMENT TO THE CONSTITUTION

The mere fact that the Constitution may, in instances, authorize Congress to exercise certain powers, does not, by itself, end the constitutional inquiry. Various other provisions which are incorporated within the Constitution, including those which protect the rights of individuals must be considered as well.

It makes no sense at all, that under our constitutional system, which places so much emphasis on duel sovereignty and the limited powers doctrine, that the Federal Government be granted such authority as to exercise Article IV jurisdiction within admitted States of the Union. Unlike so many other enumerated powers, the power that is derived from Article IV, Sec. 3, Cl. 2, of the Constitution (as it is now defined by the courts) is all encompassing. It is plenary, it is without limitation, it overrides all conflicting State law, and it places Congress in a position whereby it can deprive citizens of any or all of their God given rights at will.

The principle of dual sovereignty, like the principle of separation of powers, is a structural component embedded in the Constitution; thus, in ascertaining whether Congress possesses constitutional authority to enact particular legislation, this Court must go beyond merely identifying an enumerated power in Article I of the Constitution:

> **Congress exercises its conferred powers subject to the limitations contained in the Constitution.**

> **Thus, for example, under the Commerce Clause Congress may regulate publishers engaged in interstate commerce, but Congress is constrained in the exercise of that power by the First Amendment. The Tenth Amendment likewise restrains the power of Congress, but this limit is not derived from the text of the Tenth Amendment itself, which ... is essentially a tautology. Instead, the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States. The Tenth Amendment thus directs us to determine, as in this case, whether an incident of state sovereignty is protected by a limitation on an Article I power. — *New York v. United States*, 505 U.S., 144 112 S. Ct. 2408, 2418 (1992)**

> **[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union. ... The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. — *Texas v. White*, 74 U.S. (1 Wall.) 700, 725 (1869)**

The powers which belong to the United States do not belong to the State, and the converse is also true:

> **In a case like this one, involving the division of authority between federal and state governments, the two inquiries are mirror images of each other. If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state**

> **sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress. — *New York*, Id. at 156.**

Only by preserving dual sovereignty can this Court ensure the absolute constitutional command that "neither government may destroy the other nor curtail in any substantial manner the exercise of its powers." *Id.* at 2421 (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458, 110 S.Ct. 792, 795, 107 L.Ed.2d 887 (1990)).

The Constitution prevents the accumulation of power in a national government in order to protect individual liberty. In *New York v. U. S.*, 505 U.S. 144 at 181, the Court said:

> **The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end itself: 'Rather, federalism secures to citizens the liberties that derive from the defusion of sovereign power.' *Coleman v. Thompson*, 501 U.S. 722, 114 L Ed 2d 640, 111 s Ct 2546 (1991). 'Just as the separations and independence of the coordinated Branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, ...a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. *Gregory v. Ashcroft*, 501 U.S. 452 (1992)**

The core state powers which the United States cannot invade and Nevada cannot relinquish to the federal government include the "power of sovereignty, the power to govern men and things within the limits of its dominion." *Nebbia v. New York*, 291 U.S. 502, 524 (1934). This general power encompasses the right and duty of States "to establish all regulations reasonably necessary to secure the health, safety, or general welfare of the community. .... [and] power can neither be abdicated nor bargained away." *Chicago & Alton R.R. Co. v. Tranbarger*, 238 U.S. 67, 77 (1915); see also *City of El Paso v. Simmons*, 379 U.S. 497, 508 (1965) ("the State has the sovereign right ... to protect the ... general welfare of the people..."); *Breard v. Alexandria*, 341 U.S. 622, 640 (1951)

This Court must preserve these police powers for the States, as it is the foundation of dual sovereignty:

> **The maintenance of the authority of the States over matters purely local is ... essential to the preservation of our institutions... In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. The power of the States to regulate their purely internal affairs by such laws as seem wise to local authority is inherent and has never been surrendered to the general government. — *Hammer v. Dagenhart*, 247 U.S. 251, 275 (1918)**

Vindication of the federal claim of unlimited jurisdiction over such lands eliminates the State's power of eminent domain, which was another of the powers to which

the new States succeeded. *Barron v. Mayor and City Council of Baltimore*, 32 U.S. (7 Pet.) 243, 250-51 (1833); *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507, 532 (1848). This Court has held that power to be an inherent incident of sovereignty and the "offspring of political necessity." *Bauman v. Ross*, 167 U.S. 548, 574 (1897). The individual States, as political sovereigns, retain such power, having succeeded to the same independence. That power vested in the State the ability to create the instrumentalities of commerce and settlement: the building of roads and government buildings and, much later, railroad and telegraph lines is an incident of the right of eminent domain:

> The right which belongs to the society, or to the sovereign, of disposing, in case of necessity, and for the public safety, of all the wealth contained in the state, is called the eminent domain. It is evident that this right is, in certain cases, necessary to him who governs, and is, consequently, a part of the empire, or sovereign power. Vat. *Law of Nations*, section 244. — *Pollard*, at 223. *Emphasis added.*

This enabled the States to extend their economies, increase their tax bases and establish governmental authority over all corners of their land area.

Vindication of the claimed jurisdiction by the Federal Government results in 87%, or more, of the land area of Nevada being unavailable for taxation. An essential incident of State sovereignty is the power to tax. *Van Brocklin v Tennessee*, 117 U.S. at 155. The original thirteen States poses the power to tax all lands within their borders with the exception of those to which they voluntarily surrendered that power to the Federal Government.

V

DOES THE EXERCISE OF ARTICLE IV JURISDICTION WITHIN ADMITTED STATES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

In the instant action, the subject provisions of the Code of Federal Regulations place Cliff Gardner and his family in a class of persons who's property is surrounded by federally regulated lands. Such regulations control watershed production, (fire) fuel load situations, and grazing, all of which, would be protected by State and common law if it were not for the Federal Government's exercise of Art. IV jurisdiction within the State of Nevada. By enforcement of such regulations upon this limited "distinct and insular" minority, the Federal Government has subjected the Gardners to unequal protection of the laws.

The Gardners are attempting to protect their property rights in water, forage, and range improvements, as well as the economic viability of their family ranching operation and the ranch itself from catastrophic wildfire. The federal regulations, as applied, create a class and threaten the fundamental rights of that class. Although appearing to be national in scope, these regulations create no threat to the lives or property of ranchers, farmers, or other rural occupants of New York, for example, simply because a similar situation does not exist within the Eastern States.

In *Evans v. Cornman*, 90 S.Ct. 1752, 398 U.S. 419, 26 L.Ed.2d 370 (U.S.Md. 1970) the court had occasion to consider the attempt by the State of Maryland to exclude residents of a federal enclave located in Maryland from voting in local elections. The court made the following observations:

> **"...lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment. (Citations omitted) Moreover, the right to vote, as the citizens link to his laws and government, is protective of all fundamental rights and privileges. See *Yick Wo v. Hopkins*, ...And before that right can be restricted, the purpose of the restriction and the assertively overriding interests served by it must meet close constitutional scrutiny."**

Maryland was arguing that the purpose of the exclusion was that only those citizens who were primarily or substantially interested in or affected by electoral decisions have a voice in making them. The court noted:

> **"This Court has held that a State may not dilute a person's vote to give weight to other interests, (citing *Reynolds v. Sims*) ...fencing out from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. *Carrington v. Rash*, 380 U.S. at 94"**

The Court then affirms the District Court conclusion that it was a violation of the equal protection clause of the Fourteenth Amendment for Maryland to deny the enclave residents the right to vote in local elections.

The analogy of "fencing out" is one a rancher can readily relate to. The instant action, however, concerns a factual setting in which the Gardners' rights to equal protection are being denied by a "fencing in". That is, the entire nation has been included in the franchise that decides what happens to the land surrounding the Gardners' ranch. Cliff Gardner is denied equal protection because his vote on

matters of purely local concern have been diluted by the inclusion of the entire nation in those decisions.

In *Adarand Constructors, Inc., v. Pena*, 115 S.Ct. 2097 (1995), the Court found that the equal protection obligations imposed on the Federal Government by the Fifth Amendment were equal to those which are imposed on the States by the Fourteenth Amendment. Accordingly, the dilution of the Gardners' vote with regards to local land control denies the Gardners' equal protection of the laws.

Cliff Gardner is an individual, who needs the protection of politically responsive local officials who will protect his liberties. It is a fundamental violation of his rights to claim that he is a citizen of the State of Nevada and the United States of America, yet be located in an area wherein agencies of the Federal Government can exercise unlimited powers over the lands and resources upon which he and his neighbors rely.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the petition for Writ of Certiorari be granted.

Dated the 11th day of July, 2003.

Respectfully submitted,

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